

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**April 22, 2004**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 22, 2004, at 12:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Ronald Marnell, Chair; Morris K. Dunlap, Vice-Chair; James Barfield (in @ 1:34); Bud Hentzen; John W. McKay Jr. (in @ 1:35); Bill Johnson (in @ 12:35); Elizabeth Bishop; M.S. Mitchell; Darrell Downing; and Frank Garofalo (in @ 12:36). Bob Hernandez was absent. Staff members present were: John Schlegel, Director of Planning; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; and Rose Simmering, Recording Secretary.

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#### **1. Approval of March 25, 2004 meeting minutes.**

**MOTION:** That the minutes for March 25, 2004 be approved.

**DUNLAP** moved, **MITCHELL** seconded the motion, and it carried (6-0).

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#### **❖ PUBLIC HEARING - PLANNING COMMISSION ITEMS**

#### **2. Case No.: DR2002-01 - Request Adoption of the Midtown Neighborhood Plan Generally located 18<sup>th</sup> Street on the north, Union Pacific/BNSF Railroad on the east, Murdock Street on the south and the Little Arkansas River on the west.**

In January of this year, following a 2-year process, the Midtown community completed the Midtown Neighborhood Plan, with extensive input and discussion with the community.

The mission of the plan is:

To enhance the appearance, safety and quality of life in Midtown to make it an attractive and desirable place to live, work and play for the benefit of all residents, businesses, visitors and property owners.

The plan contains the following nine goals:

1. Build a sense of community and responsibility.
2. Maintain and improve the character of the neighborhood.
3. Encourage attractive, affordable and well-maintained housing.
4. Preserve and Enhance Historically-Designated Homes and Districts
5. Encourage a safe and peaceful neighborhood.
6. Improve park and recreational space experiences and encourage the use of parks.
7. Eliminate storm water drainage problems.
8. Eliminate speeding traffic, enhance pedestrian and vehicular safety and circulation, and encourage walking.
9. Add and maintain neighborhood shops and businesses.

The plan also outlines a land use concept that seeks to maintain the residential character of the neighborhood, provides for the development of a linear greenway to connect three neighborhood schools, and guides redevelopment along the Santa Fe corridor, and land around the schools. No zoning proposal has been made, and rezoning is not a part of this plan.

Cost estimates and timeframes have been established as a baseline for the continuing work of the Neighborhood Plan Implementation Committee, which will work to develop a detailed implementation plan subsequent to the adoption of the plan document.

We have received letters of support from two neighborhood-based associations working in the area and various associations and agencies identified in the plan document are ready to begin working on the implementation of the neighborhood plan.

The plan has been made available online and in print, and was presented in detail to the MAPC on March 11, 2004. Members of the Midtown Plan Steering Committee and the Historic Midtown Neighborhood Association are available today to answer any questions that might arise.

**Recommended Action:** That the MAPC approve and recommend the adoption of the Midtown Neighborhood Plan, by the Wichita City Council and Sedgwick County Board of Commissioners, as an amendment to the Wichita-Sedgwick County Comprehensive Plan.

**DUNLAP** This plan has not had substantial changes since the originally presentation to MAPC and the Advance Plans Committee?

**JOHNSON** Not at all.

**BISHOP** I would like to let the Board know I have a conflict of interest on this case.

**MOTION:** Approve subject to recommended action and approval.

**MITCHELL** moved, **HENTZEN** seconded the motion, and it carried (5-1-1) **MARNELL** opposed and **BISHOP** abstained.

3. **Case No.: DR2004-05** - Request Amendment to the April 19, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code (UZC). The proposed amendment would eliminate the 1,000-foot separation between alcohol establishments and sexually oriented businesses and change the date whereby a sexually oriented business with a valid license could continue to operate as an exception to the ordinance

Regulations for the sexually oriented businesses were added to the Unified Zoning Code ("UZC") in 2001 to correspond to Sedgwick County's Adult Entertainment Code. A copy of the proposed amendment in delineated form is attached for your review.

An analysis from Karen Duranleau, Assistant County Counselor, is provided herein:

**"Alcohol/Cereal Malt Beverage Establishments.** The changes eliminate the requirement that 1,000 foot buffer be between an adult establishment and an alcohol or cereal malt beverage establishment.

**Location from Churches, Schools, Public Parks, Residences or Other Adult Establishments.** The requirement that new adult establishments be located more than 1,000 feet from churches, schools, public parks, residential dwellings or other adult establishments is NOT changed. However, adult establishments operating and licensed on June 28, 2000 and continuously operating since then need not relocate but may remain indefinitely at that location if they meet certain requirements. The proposed changes refer to the County's Adult Entertainment Code provisions for a determination as to whether those requirements are met.

The County's Adult Entertainment Code requires the following be met to allow an existing establishment to remain at the existing location. The establishment must be: (1) separated from churches, schools, public parks, residences or other adult establishments by a snow emergency route or floodway; (2) licensed; and (3) remain licensed continuously.

Grandfathering will be lost, however, if: (1) operation of an adult establishment is discontinued for 90 days or more; (2) nuisance activity takes place on the licensed premises or is engaged in by adult establishment employees; or (3) the establishment becomes unlicensed."\*

**Unified Zoning Code, April 19, 2001 edition**  
**Proposed changes regarding Sexually Oriented Businesses (Delineated)**

**Section III-D-6-ff.**

Sexually Oriented Business in the County.

Sexually oriented businesses shall be permitted in the unincorporated area of the County only when such business is properly licensed with the County pursuant to the County's Adult Entertainment Code (Article VIII of Chapter 17 of the *Sedgwick County Code*), and only when such business is in compliance with the requirements of said Adult Entertainment Code. No sexually oriented business shall be located less than one thousand (1,000) feet from a church, school, public park, residential dwelling or other adult establishment ~~or Alcohol Establishment~~, all as defined in the Adult Entertainment Code, subject to the amortization provisions set forth in the Adult Entertainment Code and in Section VII-J herein.

**Section VII-J.**

Amortization of Non-Conformities: Sexually Oriented Business Distance Requirements

1. No sexually oriented business in Sedgwick County shall be located less than one thousand (1,000) feet from a church; less than one thousand (1,000) feet from a school; less than one thousand (1,000) feet from a public park; less than one thousand (1,000) feet from a residential dwelling; or less than one thousand (1,000) feet from another adult entertainment establishment, regardless of licensure; ~~or less than one thousand (1,000) feet from an Alcohol Establishment, regardless of licensure.~~ The terms church, school, residential dwelling, and adult establishment, ~~and alcohol establishment~~ shall be defined as set forth in the County's Adult Entertainment Code (Article VIII of Chapter 17 of the *Sedgwick County Code*) and any amendments thereto. This distance is to be measured from the nearest property line of the church, school, public park, residential dwelling, or other adult establishment, ~~or alcohol establishment~~ (regardless of licensure), to the nearest property line of the premises on which the sexually oriented business is located or of any parking lot designated to be used by the patrons of such an establishment.

- a. Exception: Section 1 above shall not apply to a sexually oriented business if said sexually oriented business first locates at a particular premises after June 28, 2000; and the church, school, public park, residential dwelling, or other adult establishment ~~or alcohol establishment~~ moves into the one thousand (1,000) foot area after the sexually oriented business has commenced operations on the premises.

- b. Exception: A sexually oriented business may be located within one thousand

(1,000) feet of a currently occupied residential dwelling provided that any currently occupied residential dwelling within one thousand (1,000) feet of the sexually oriented business is separated from the sexually oriented business by a roadway designated as a United States Highway.

c. Exception: A sexually oriented business may remain at a location within one thousand (1,000) feet of a church, school, public park, residential dwelling or separate adult establishment ~~or alcohol establishment until June 30, 2004~~ if said sexually oriented business was operating as a sexually oriented business at said location on or before ~~March 4, 1997, June 28, 2000~~ and held a valid adult establishment license for said location on ~~June 28, 2000, March 4, 1997~~, so long as said sexually oriented business is in compliance with the provisions of County Resolutions regulating such adult establishment ~~is and remains properly licensed~~ and so long as said sexually oriented business has maintained an adult establishment license as required by the County's Adult Entertainment Code, or the equivalent thereof, continuously ~~operated as a sexually oriented business since June 28, 2000, March 4, 1997~~ subject to the exceptions and limitations set forth in the County's Adult Entertainment Code.

(1) ~~The exceptions set forth in Section VII-J.1.c shall be null and void after July 1, 2004.~~

2. On or before June 30, 2004, all sexually oriented businesses where the licensed premises are located within one thousand (1,000) feet of a church, school, public park, residential dwelling, ~~or separate adult establishment or alcohol establishment~~, all as defined in the County's Adult ~~Entertainment~~ Entertainment Code, shall cease operation unless exempted pursuant to the provisions of the County's Adult Entertainment Code.

DONNA GOLTRY Planning staff presented the staff report.

KAREN DURANLEAU, ASSISTANT SEDGWICK COUNTY COUNSELOR I will give you a brief background. We enacted a new Code in June of 2000, and that required that certain establishments be licensed properly. They had four years to move to locations that were outside of the separation distance from other adult establishments, churches, schools, parks, residential dwellings, and alcohol establishments (1,000-foot separation).

We came to MAPC early in 2001, and asked for Zoning Code revisions to comply with those County Code provisions and you approved such action. What has happened now is the County on, March 31<sup>st</sup>, 2004, changed the County Code in certain ways, and we are asking you to change the Zoning Code again.

What exists now are the establishments that we believe to be operating as adult establishments: Jezebel's, at 47<sup>th</sup> and Oliver; Pleasures, at 47<sup>th</sup> and West Street; Excitement Video, at 47<sup>th</sup> and Clifton. Also, there are some establishments that enter the gray area. So, what these revision would do, they would require Excitement Video to move from that location, which the owner has voluntarily placed a Protective Overlay on that property. So that business owner is cooperating. The revision would allow Jezebel's and Pleasures to remain at those locations with no date restrictions on them.

You would make things very difficult legally for the County if we had certain provisions in place in the County Code and the Zoning Code did not comport with that.

DUNLAP What are we planning to do with the gray area that will help the Sheriff enforce what we really want?

DURANLEAU The sheriff is allowed to enforce that activity, what it is essentially is a nudity ban. So the sheriff can issue tickets if they find nudity there. They could be cited for operating an adult establishment without a license. The dancers could be cited for dancing in an establishment that is not licensed.

DUNLAP Is the gray area a big problem? Are we getting a lot of complaints?

DURANLEAU To my knowledge the County hasn't gotten a number of complaints on those. Those gray area clubs are: The Red Garter at 53<sup>rd</sup> and Meridian, and Club Phoenix on South Broadway; that is all that I am aware of.

GAROFALO What prompted these amendments?

DURANLEAU We were coming to the June deadline this year. The County was looking at why they made these changes in the year 2000, and it was prompted only by the Oaklawn citizens. They filed a petition with the County with 1,400 signatures on it, and it seemed to the Commissioners that there was a concern about this activity. By enacting these provisions, we were able to clean up that Oaklawn area, and thereby taking care of the problem in the Oaklawn area.

HENTZEN What the County Commissioners are asking now is to make the zoning in compliance with what they just did?

DURANLEAU Yes.

MARNELL Which portions of this, if you were the owner of one of those types of legally operating businesses, would you say would see this as more restrictive or less restrictive of these changes?

DURANLEAU Definitely striking the alcohol establishment exemption is more lenient because before, we made those two be completely separated by 1,000 feet. We have added many restrictions such that they are on a short leash. They have to remain

licensed. Only those that we have said can be grandfathered are grandfathered. They have to not to have had any nuisance activity; nuisance being defined by Kansas Statue as gambling, prostitute, drug use or sales. So they are on a short leash.

MARNELL Why did these changes not affect those clubs but affected the one in Oaklawn.

DURANLEAU The one in Oaklawn is currently licensed as an adult bookstore, and that makes it fall under the Adult Entertainment Code portions, and not the alcohol portions of our Code, so that it would be out under the revisions.

MARNELL It would have been out before right?

DURANLEAU Right.

GAROFALO I don't understand this paragraph under the County's Adult Entertainment Code that requires the following be met to allow an existing establishment to remain at the existing location. The establishment must be: (1) separated from churches, schools, public parks, residences or other adult establishment by a snow emergency route or floodway. That is just a street.

DURANLEAU It is a street that is more heavily traveled, and it is designated. It is not any street because a snow emergency route is a specially designated arterial type street, which is more heavily traveled. It is intended to take into consideration the effects that these establishments have on neighborhood and the effects wouldn't be spilling over from these establishments quite as much if they are separated from those sensitive uses by a snow emergency route or floodway.

**MOTION:** Adopt the amendment and staff recommendations.

MARNELL I would have been prepared to vote against this because I think both the City and the County have gone overboard in what they try to regulate for adult businesses. I think they have a legitimate right to regulate that type of behavior, but the ordinances that they came up with were not intended to regulate and contain those businesses, but, in fact, put them out of business. I opposed them the last time, and voted against it. And I would never go to any of these businesses, but I think they have a legitimate right to have the business, and that people who want to avail themselves to those businesses have that right. I think it is outrageous that both of these governing bodies have taken that severe type of stance on this. But, however, I am going to vote for it because it makes it more lenient.

**DOWNING** moved, **JOHNSON** seconded the motion, and it carried (8-0).

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❖ **SUBDIVISION ITEMS**

**4. Consideration of Subdivision Committee recommendations**

**4-1. SUB2003-149 – Final Portion of an Overall Preliminary Plat – AVALON PARK THIRD ADDITION, located on the east side of Tyler Road, north of 37<sup>th</sup> Street North. (MAPC Deferred 1-22-04 and 2-19-04.**

**NOTE:** This final plat is a portion of the overall preliminary plat of the Avalon Park Addition, which was approved for this site on January 16, 2003. This final plat consists of the northern portion of the overall preliminary plat approved for the site and represents the second phase of development. The site is located within the 100-year floodplain.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan has been approved.**
- D. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- E. If any of the intended recreational uses for the reserves includes a swimming pool, a site plan shall be submitted with the final plat, for review and approval by the Planning Director. The site plan shall include the information indicated in the Subdivision Regulations. Otherwise a conditional use and public hearing will be needed in the future.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

- H. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- J. **GIS** needs to comment on the plat's street names. **Crown Ridge needs to be revised to a new name.**
- K. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy and Aquila have requested additional easements.**
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff presented the report.

HENTZEN The applicant wants to go forward with the plat. Does that mean that you and KDOT are in agreement with what they want to do?

STRAHL That we are in agreement with KDOT?

HENTZEN Does that mean that the applicant has agreed to the right-of-way?

STRAHL That is still in the negotiation phase right now.

SCHLEGEL If you move forward and approve this plat today, there is not a set aside then for the right-of-way for that highway, because that is not contemplated in the plat that is before you. So your approval of the plat today would allow him to proceed with what he was proposing to do originally before he started these negotiations with KDOT. If for some reason the applicant and KDOT are able to come to an agreement on the purchase of the right-of-way, then KDOT wants him to come back and amend the plat.

What KDOT wants is about 100 feet along that north property line for right-of-way for that new highway, and they have just started the negotiations with this applicant for that. Your approval of that plat today would mean that he could go ahead and develop it according to that drawing. Now, if for some reason they were able to come to an agreement on the sale of the right-of-way that KDOT wants, then he would have to come back and redo this plat.

HENTZEN The Subdivision Committee already approved this, and that is pretty solid evidence to me as to what needs to be done.

ROB HARTMAN, PEC, 303 S. Topeka, Wichita, KS 67202 The applicant received an offer on Monday from KDOT, and he is now reviewing that, but he still wants to go ahead with the plat. The offer was lower than he had anticipated. But, I assume they will come back with something in the future, if so, he said he would come back in and replat it. He has been held up now for a couple of years, and thinks he ought to be able to move forward.

GAROFALO Is the applicant prepared to go forward with some work there?

HARTMAN He has started on the south end, and is on the second phase of design. There are five phases in the south half that he will do before he jumps up to this phase, so it is not like he will start on this section tomorrow.

BISHOP As part of this, do we know where the route is going to be? With that 100-foot I assume a good share of that is going to be buffer between the highway and the subdivision, and I think it would be better for the applicant to have a sufficient amount of buffer to put in landscaping between the homes and the automobiles.

HARTMAN He knows they are looking at the north 100 feet, so he needs to decide on how much buffer on top of that they will need. If they acquire that right-of-way, he will have to figure out how he is going to replat it.

BISHOP So the applicant might have to provide some buffer?

HARTMAN Yes, he might have to.

MITCHELL Have you done any sketching to indicate how you would replat if the north 100 feet were taken?

HARTMAN Yes, we gave KDOT several different layouts.

MITCHELL Would the streets that run off the north, the east/west main collector, be materially changed?

HARTMAN Yes.

JOHNSON I wonder how they are going to market this to homeowners without knowing what the highway is going to do. How are you going to market this and how many people will be unhappy with the developer when you don't know what is going to happen to the north and if KDOT does acquire that.

HARTMAN That is difficult. He is unable to market it today without knowing that he can go through with this plat, and at least he can market it as this, and then if they agree on something, obviously, he will change his marketing tactics.

JOHNSON You think the applicant might be happy to go ahead with the southern 2/3rds of this?

HARTMAN No, I don't think so, because it changes so much on the east end there when you come down that 100 feet that he can't just lop it off and then stop it.

BISHOP I believe Subdivision Committee deferred this at least once. The discussion at that meeting was that the State was contacted, and there were attempts made to get some kind of clarity that would assist in the planning process on this, and it was not forthcoming until it was pretty much passed by Subdivision. On the one hand, it doesn't seem good planning to go forward with a plat that is not likely to be a reality. But, on the other hand, I feel like we have tried the patience of the applicant quite a bit.

SCHLEGEL KDOT always has the option, even with the approval of this plat, that when they are ready to condemn right-of-way for the new highway, they can take it, and pay for it that way. All that was being done here, is that we were trying to encourage KDOT to accelerate the purchase of the right-of-way, and under a willing seller/buyer contract purchase the right-of-way in advance and not have to later go in and condemn it. Legally I don't know that we have a basis for turning down this plat, at this point, because that highway is not really, truly, an official project yet. It has not received the type of environmental review and approvals that it needs at the federal level before they can start doing the taking of the right-of-way for the project.

MITCHELL Is there any reason the plat cannot be further deferred?

SCHLEGEL There is no reason why it cannot be deferred again.

**MOTION:** To defer for two months.

**MITCHELL** moved, **BISHOP** seconded.

DUNLAP I don't see what we gain by doing that. I feel like we are preventing him from going ahead with the south end of the property, because it now won't be platted. We have already asked him to step aside for quite awhile, and we are not even sure if KDOT is ever going to get here. I say go ahead and approve it, and let him get started on the south end.

MITCHELL My reason is that if it has to go to condemnation after the plat is approved, the condemnation case recognizes that platted lots have a considerably different value than the land is today.

**SUBSTITUTE MOTION:** To accept the recommendation of the Subdivision Committee and approve the plat.

**HENTZEN** moved, **DUNLAP** seconded, and it carried (6-2) **BISHOP** and **MITCHELL** opposed.

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**4-2. SUB2004-13 – Final Plat – COPPER GATE NORTH ADDITION, located on the north side of 13<sup>th</sup> Street North and on the west side of 135<sup>th</sup> Street West.**

Note: This site is located in the County adjoining Wichita's city limits and annexation is required. The north portion of this final plat includes a revised street layout. The applicant requests a zone change (ZON 2004-15) for a portion of the site from LC, Limited Commercial to SF-5, Single-Family Residential.

**STAFF COMMENTS:**

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being considered by MAPC, the zone change will need to be approved
- B. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted.
- C. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **City Engineering has approved the drainage plan. A drainage guarantee is needed. The off-site drainage easement by separate instrument as denoted on the plat needs to be provided to MAPD.**
- F. **Traffic Engineering has requested a petition for left-turn lanes along both arterials.**
- G. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- J. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- K. **GIS needs to comment on the plat's street names. *Old Wick Rd needs to be replaced with a new name. Decker Drive needs to be "Decker". The stub to the west should be labeled as Autumn Ridge.***
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.

- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Sedgwick County Rural Electric Cooperative will be requesting additional easements. SBC has requested additional easements.**
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **BISHOP** seconded the motion, and it carried (10-0).

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**4-3. SUB2004-39 – One-Step Final Plat – WOODLAND ELEMENTARY ADDITION, located north of 13<sup>th</sup> Street North and west of Broadway.**

**NOTE:** This is a replat of a portion of the Garden Grove Addition and Ferrell's 4th Addition.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site. **Applicant shall meet with City Engineering regarding abandonment of a portion of the sewer line.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. **Traffic Engineering** has requested a 5-ft contingent dedication of sidewalk and utility easement along perimeter streets.
- E. The Applicant has platted 20-ft building setbacks which represents an adjustment of the Zoning Code standard of 25 feet for the TF-3, Two-Family Residential District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- F. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.



P. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

MITCHELL I have a declaration to make, and a recommendation, which I will not be able to vote on today, because I have made an ex parte contact with a member of the Board of Education staff, and the public engineer. The discussion having to do with the Traffic Engineer's recommendation for an additional five feet of right-of-way on three sides of the Woodlawn School where the streets are, and have been built for a number of years; the typical residential standard of 30 foot with monolithic curb, retaining walls, and fences with proximity to adjacent properties on the opposite side of those streets. If that 60 foot were required by dedication of both sides, that would not be practical. I want to abstain from this item.

SCHLEGEL Mitch had made a contact to the school district staff regarding this item.

HENTZEN Can we not go and talk to people and find out what the facts are without ruling ourselves out?

SCHLEGEL At a minimum when you do that you have to reveal that you have had that ex parte communication.

HENTZEN He did that.

SCHLEGEL The other part of it is that if he has expressed an opinion about the outcome of this in that ex parte communication, then he should take himself out of the vote. I don't know what exactly was said to the School District staff when he contacted them, only Mitch knows that.

HENTZEN I am presuming he gave them an opinion.

SCHLEGEL If he gave them his opinion, then your bylaws say that he should take himself out of the vote.

HENTZEN You better look at the bylaws.

JOHNSON I know traffic engineering is not here, but when they are in an area like this and there are walls, fences, and stuff like that, it appears to me that homes would have to be knocked down in order to get the additional right-of-way across the street from these.

NEIL STRAHL Presented the staff report and recommendations. In addition, the Subdivision Committee granted a five-foot reduction on the building setback from 25 feet to 20 feet.

JOHNSON If there is stuff that is this right-of-way, like if it is a home or something across the street, if they have five foot on that side, if that it is the case, I don't know how they look at that.

STRAHL It does appear that the structures on the other side of the street are extremely close to the right-of-way.

MITCHELL I measured from the curb line to the edge of the house on the two houses on the south side of 16<sup>th</sup> Street. They apparently are on the six-foot setback, so that if you took an additional five feet you would be within one foot of the house.

BISHOP Neil, you say it is a contingent sidewalk and/or utility easement?

STRAHL Yes, contingent sidewalk and utility easement.

BISHOP The utilities would be water and sewer?

STRAHL Yes.

BISHOP I know that this is a neighborhood that is likely to need or has had at least partial upgrading of utilities like water and sewer and that is frequently a problem if there isn't sufficient space to redo them.

GAROFALO Is the applicant objecting to the contingent dedication? Why are we talking about this, it was approved by the Subdivision Committee.

STRAHL I was informed yesterday that the applicant was objecting, but they are not here today to do so. They informed me that they wanted to retain as much right-of-way that was possible, even though last week there was no objection.

**MOTION:** To defer within this meeting until the applicant or Water and Sewer Engineering can be present today.

**DUNLAP** moved, **MARNELL** seconded the motion, and it carried (8-0).

NEIL STRAHL Planning staff presented report. The Traffic Engineer is now in attendance as well as the applicant's agent.

PHIL MEYER The applicant in this case is USD 259. Scott Logan and Joe Hoover have discussed this project. Joe Hoover called me before this project went to Subdivision, and these right-of-ways don't have today's standards of right-of-way. He said Scott Logan was asking for a five-foot contingent sidewalk and utility easement. In an effort to work with the City, the School District agreed to that. Joe Hoover said they were not excited about moving the fence, and didn't really want to have to move the fence, as when we expand the school, the playground is already getting smaller.

Right before the meeting I saw e-mail where Joe wanted this case to be appealed to the Planning Commission and let them decide. There are three choices: approve as Subdivision did, which is with the contingent sidewalk and utility easement; approve with just the utility easement, which doesn't allow the City to put a sidewalk there if they need to but it allows the fence to stay in place so if they needed to put utilities in there they could, and they wouldn't have to move the fence so the playground is not being impacted as much; or you could just approve without either.

DUNLAP You're representing the school side of the street?

MEYER Yes.

MARNELL Aren't there existing sidewalks there?

MEYER I can't remember if there are sidewalks all the way around it, but it looks like from the aerial that there are sidewalks.

MARNELL So, if the sidewalk is already there, I am baffled why they want a sidewalk easement.

SCOTT LOGAN, City of Wichita Traffic Engineering Some of the issues are that we have right-of-way that has been established a long time ago for street construction. We need a lot more right-of-way if we are going to do any more maintenance or anything in the future. What this mechanism does is provide a sidewalk and utility easement providing us a little more space in the future to work with the schools. We met with the Site Planning Committee at the school. At this school there is a fence, the sidewalk, the playground, but it is a balancing act. When we went to the school we didn't have the drop-off zones that they have today.

There is a little green area and a 4-foot sidewalk. I would like to leave it up to the Site Planning Committee at the time if we ever go in and reconstruct. The street should have trees, landscaping and other features here. But without having a contingency there for sidewalk and utility easements, it is going to make it very tough in the future. At this time, we could provide the mechanism where that issue is already off the board because sometimes it takes time for lawyers to draw up easements and so forth. By waiting until a future time that we need an easement, that is going to cost both the City and the School District more money which could be easily done at this point.

JOHNSON Let's say that you had that five-foot contingent dedication on the school property, but you don't have it on the other side, what process would you go through? Would the street be offset five foot since you have more on the centerline on one side versus the other or would you buy 5 foot on the other side?

LOGAN I think the most sensitive side is the school side; it is going to be a balancing act. I don't think the travel way will change from what it is today, but we don't know what kind of parking or whatever the needs will be 10-15 years from today.

BISHOP If it is a contingency sidewalk utility easement, will it necessarily entail moving the fence right away?

LOGAN If we have to reconstruct, fencing is typically in the plan, but we only would move the fence if that is what is taking place in the site plan.

BISHOP It would not be an expense or a problem right away to move the fence?

LOGAN It probably will not be an expense to the School District at all because it is probably incorporated in the project cost. Though I have seen this fence and it needs painting and we could probably simply move it back.

BISHOP Not until the project is at hand?

LOGAN This just allows us room to maneuver if and when we do construction.

BARFIELD Does the fence right now abut the sidewalk? How far would we move the fence?

LOGAN It is really close. We would have to move it. Five foot would be the maximum.

MARNELL This contingent line would move to behind the fence in this perimeter?

LOGAN Typically the fence is on the other side of the sidewalk, and if they need it, and the decision-makers think that the sidewalk needs to be widened, the fence would be moved back. We see the value of fences because it keeps balls in and children in the right areas.

GAROFALO The addition work is going to be done or is it already done?

MEYER It is going to be done.

GAROFALO Can you indicate what is going to be done?

MEYER There are two building additions that will be done.

GAROFALO Nothing new that is going to go right up against the current fence?

MEYER No.

MCKAY How far is the present fence now from the curb line?

MEYER I would say that is less than 10-feet. It is very tight in that area as it is an older part of town.

MITCHELL Is now the time appropriate for me to speak on this item?

MILLER I believe this is a violation of the Bylaws. The Bylaws specifically prohibit members of the Planning Commission from speaking on cases. It was brought up in a previous meeting several years ago and they specifically changed the Bylaws to prevent this.

SCHLEGEL Let's check the Bylaws.

MARNELL He is speaking as a private citizen.

SCHLEGEL Mitch, is what you are about to speak on - are you representing the case?

MITCHELL No, I am not representing either the applicant or the City.

MARNELL Are you speaking as a citizen? Is that correct?

MITCHELL Someone else is going to have to determine that.

MARNELL Let's hope you are a citizen.

Discussion about Bylaws and whether a Commissioner can testify or present before the Planning Commission.

BOB PARNACOTT, Assistant County Counselor. As long as he stays on that side of the podium throughout the vote, I think you are fine.

MITCHELL I have raised this issue knowing this area, and knowing those streets were built in the 1950s to the same standard that all residential streets had been built to in those days - 25-feet of pavement, a curb and gutter on either side. I don't see any reason within the foreseeable future of doing anything that would widen or change the configuration of the right-of-way and the streets. There is about 8 feet between the back of the curb and the edge of the fence, the fence is probably 6 inches to a foot behind the sidewalk, there is about 4-5 feet between the back of the curb and the near edge of the sidewalk in which utilities could be placed if they are necessary. The one utility that comes in late in these old subdivisions most often is fire protection. Fire protection exists in this area. I don't see that as anything recent that would go into the area.

My concern is that we are asking for additional dedications and/or easements without any reasonable expectation of a public benefit from their being asked. It is my opinion that often the applicant isn't told that he must do this but it is easier to agree than it is to not support the staff, and I don't think that is a position that the staff should take. There are places and times where a legitimate addition to right-of-way is appropriate. We have those in the Subdivision Regulations, and in the Access Management Policy, and I don't believe this case fits either.

BARFIELD What is the width of the present sidewalk?

MITCHELL It is 4 feet.

MEYER This is a tough decision for the Planning Commission at this location, but what is more important to the neighborhood and the school is what should be considered; the fence location, and having room inside the playground, for the playground, or the sidewalk that surrounds it on the outside? This is a situation where, as you expand that school and the more kids you plug in there, the more they get out in the playground, the more compact they get, the more difficult it gets. I know, having kids in grade school right now, I know the value of recess and the value for teachers to get them out there and let them play. I will tell you that playground is probably more important at that school than surrounding sidewalks. I believe the School District could work with the City in the future, and if the City came in with a big plan to do something there, they would work with them. More than likely, if there was a significant change in that area around the school, it is going to be driven by the school where they are going to be coming to the City to work together. I would suggest that you recommend it either with just the utility easement, which allows the fence to stay there, or approve it with neither.

BARFIELD John, there is a new school being built at 29<sup>th</sup> and Woodlawn; do we know the width of those sidewalks?

SCHLEGEL I wouldn't know.

LOGAN I don't have any idea.

**MOTION:** Approve subject to staff recommendation and modify Condition D to remove the five-foot contingent sidewalk dedication.

**MCKAY** moved, **DUNLAP** seconded the motion.

BISHOP I think this is difficult to look at. With older neighborhoods we need more flexibility, so older neighborhoods can adapt to changing circumstances. One of those changing circumstances are SUV's. There is a desirability to have nice narrow tree-shaded streets, but at the same time when you have the parking along the street, letting kids out and so forth, it does make it difficult. I don't know what might be planned along there in the future, but I believe it is going to take some planning to provide some flexibility. I will not be supporting the motion.

HENTZEN I am going to vote for the motion. If we accept or need and force the dedication, and the Traffic Engineer or the School Board hasn't showed that there are any plans in anybody's mind that will require it, not 5, 10, 15 years, but think of the time when the citizen comes up here and they want a dedication or a contingent dedication without any plan to back it up or show the need, and that is the reason I am going to support the thing because I don't want you to use it on other things that are not justified.

MARNELL I think I will also support the motion. I think if the school wants to create drop-off zones they can create that on their side of the property, and the City would certainly cooperate with them on the driveways and the changes necessary to do that.

The vote on the motion carried (7-2-1) **BISHOP, BARFIELD** opposed and **MITCHELL** abstains.

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**4-4. SUB2004-41 – One-Step Final Plat – LIBERTY PARK THIRD ADDITION, located south of 13<sup>th</sup> Street North, on the east side of 135<sup>th</sup> Street West.**

**NOTE:** This is a replat of a portion of the Liberty Park 2nd Addition. The street layout has been revised and lot sizes reduced.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. **The applicant shall contact Debt Management regarding the submission of a respread agreement for special assessments of existing improvements.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- E. **Traffic Engineering** has requested a petition for future left turn lanes along 135<sup>th</sup> St. West.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves for that Addition, but not being replatted by this Addition, the above covenants and/or other legal documents shall be provided which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- H. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- I. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- J. **GIS** needs to comment on the plat's street names. **Liberty Ct should be revised to Liberty Cir. The easternmost Alderny Ct should be renamed Alderny Cir.**
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the

protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy has requested additional easements.
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** Approve subject to recommended action and approval.

**MARNELL** moved, **DUNLAP** seconded the motion, and it carried (8-0).

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**4-5. SUB2004-38 – One-Step Final Plat – THORN CREEK FARMS ADDITION, located on the west side of Greenwich Road, north of Harry.**

**NOTE:** This is an unplatted site is located in the County within three miles of Wichita's boundary. The applicant has requested annexation since the parent parcel adjoins the City of Wichita. The site has been approved for a zone change (ZON 2003-12) from SF-20, Single-Family Residential to GO, General Office subject to platting.

**STAFF COMMENTS:**

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed.
- B. Municipal services are available to serve the site. An off-site private sewer easement is needed.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. A drainage plan needs to be provided to County Engineering.
- E. The plat proposes one opening along Greenwich Road. Traffic Engineering has approved the access controls. A restrictive covenant shall be provided for future cross-lot access with the property to the south upon its development for non-residential use.
- F. Traffic Engineering has requested the dedication of additional right-of-way along Greenwich Road to conform with the 60-ft half-street right-of-way required by the Access Management Regulations.
- G. A Block shall be designated on the face of the plat as referenced in the plat's text.
- H. Since this is a City plat, approval will not be needed by the County Commission, and the County Commission signature block may be deleted.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To defer two weeks.

**MARNELL** moved, **GAROFALO** seconded the motion, and it carried (8-0).

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❖ **PUBLIC HEARING — VACATION ITEMS**

**5-1. VAC2004-09 – Request to Vacate a Utility Easement and Utility/Drainage Easement, located north of Douglas, west of Meridian (on the northeast corner of Mt. Carmel and Sheridan). (MAPC deferred 4-8-04)**

**OWNER/APPLICANT:** Tim Malone

**LEGAL DESCRIPTION:** See attached legal

**LOCATION:** Generally located north of Douglas, west of Meridian (Northeast corner of Mt. Carmel and Sheridan)

**REASON FOR REQUEST:** To allow for existing house within a utility easement; to allow for proposed garage construction within a utility and drainage easement

**CURRENT ZONING:** "MF-29" Multi-Family Residential; "MF-29" Multi-Family Residential to the north and east of subject property

The Applicant is requesting to vacate portion of a utility easement established by separate instrument along the eastern portion of the property to allow for the encroachment of an existing house. This vacation will require the relocation of an existing sewer line. The Applicant is also requesting to vacate the south 10 feet of a 20-ft drainage and utility easement platted along the north property line to allow for the construction of a garage. An administrative adjustment is needed for encroachment of the house into the zoning setback. The applicant is also advised that a variance is needed for the encroachment of the house into the street side setback along Sheridan.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  - 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time March 18, 2004, which was at least 20 days prior to this public hearing.
  - 2. That no private rights will be injured or endangered by the vacation of the above-described easements, and the public will suffer no loss or inconvenience thereby.
  - 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility easement established by separate instrument, and the platted drainage and utility easement described in the petition should be approved subject to the following conditions:

1. City Water and Sewer Department has required the relocation of the sewer line that is located within the utility easement dedicated by separate instrument.
2. An administrative adjustment needs to be approved for the encroachment of the house into the side yard setback.
3. Utilities Representatives need to comment on the acceptability of this vacation and any requirements.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval, subject to the following conditions:

1. City Water and Sewer Department has required the relocation of the sewer line that is located within the utility easement dedicated by separate instrument.
2. Utilities Representatives need to comment on the acceptability of this vacation and any requirements.
3. An administrative adjustment needs to be approved for the encroachment of the house into the side yard setback.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

NEIL STRAHL Planning staff This case was deferred from MAPC on April 8, 2004. The center of discussion was in regards to the utility easement along the eastern portion of the property. The City Water and Sewer Department was in favor of the vacation, contingent upon relocation of the sewer line that is being covered by that utility easement to the property to the east. At our last meeting, the adjoining property owner objected to the relocation of the sewer line onto his property, and there was discussion on an alternative routing of that line. However, the case was deferred to today's meeting to hear from the Water and Sewer Department.

JERRY BLAIN, Wichita Water and Sewer Department The vacation easement is required here because of the construction of the house too close to the existing sanitary sewer. We have looked at several different options; one involved relocating the sewer to the east with an intermittent manhole located in the adjacent property where there is one existing now. This is the original suggestion we had for the relocation that would build a new manhole to the east, separating the sewer line from the side of the house, and it also requires the construction of two manholes, one east of the house and then one south of the house. That sewer line does continue on south to the line just north of Douglas. The houses on the south side of Mt. Carmel are connected to that particular sewer line. This is another option we have considered; this would build another manhole between two existing manholes, and this would allow us to keep the sewer line in the existing easement and it does not give as much separation from the house, as you can see. We are not as fond of that particular alternative because it does not give much separation from the house to maintain it. There is another option which would basically move the sewer into the existing easterly manhole. Again it can go to a new manhole on the south side. We did not pursue that one because that would require acquiring additional easement from the property owner to the east, and there might be some problem with that location. Option #3 would run the line along to the west, along the easement on the north side to a 36-inch sewer line in Sheridan. While this one is achievable, there are some things that we are not as enthusiastic about. One is a 36-inch sanitary sewer that has a lot of water going down it. We normally don't like to build new manholes on a sewer of that size with that kind of volume going down it; because the existing line is a clay line which probably doesn't have any problems, but whenever you expose a line, especially one of this age to air, strange things can happen. We would still have to build a new manhole on the south side of Mt. Carmel to continue to have that 8-inch line in service for the houses on the south side of the street.

MARNELL In Option #3 that you have up there on the screen, does that abandon the line on the east property line?

BLAIN It would abandon the line from the north side of the property to the south side of Mt. Carmel.

DUNLAP Who is going to pay for all these options?

BLAIN The builder of the house would be paying for all of those options.

DUNLAP How often in your experience is it necessary to maintain that line that the house is so close to? Is this something that might happen once in 100 years or every 5 years?

BLAIN In terms of the life of that sewer line we would expect to get in there once in the life of that sewer line.

DUNLAP What is the damage if we leave it just like it is?

BLAIN Where it is right now; where that sewer line sits relative to the house that is being constructed, I would not be confident that we would be able to get in there and maintain that sewer, and expose that sewer, and do work on it without damaging the house or being able to get in there reasonably with the equipment.

DUNLAP Go back to Option 2. Using this option, how much disturbance is there to the property to the east?

BLAIN There would be some because part of that sewer line is still on the east side of the property line that we would be constructing.

DUNLAP So you would have to dig a new trench and put a new sewer in there and cover it back up? But there would be no opening in that person's area, right? After it is all down, it is covered up, buried, and you don't know that it is there right?

BLAIN The new house is going to have to connect to that line after it is constructed.

BISHOP Option #2, that north manhole is already there, correct?

BLAIN No, we would have to construct that manhole and construct the manhole at Mt. Carmel.

BISHOP There is a second manhole on the property to the east?

BLAIN Correct. There are two manholes in the east/west stretch right now. We would be putting three manholes in and one of those would be abandoned.

BISHOP That would leave the property owner to the east with two manholes on his property. Can you show me where the other one is? Is there an easement to the north?

BLAIN There is an east/west easement now. I think it is primarily a drainage easement. We would not have to have an additional easement if we go straight west.

BISHOP When you have a manhole on your property, the pipe accesses or comes to that manhole, it doesn't go over and straight up, it angles, correct?

[Tape change.]

BLAIN Eight feet is probably closer to the normal sewer depth for houses that have basements.

MCKAY Could this be accomplished if the builder and the owner would give a hold harmless agreement?

BLAIN That was the original thing that we looked at and our determination is that the sewer is too close to where that house sits now to get in there and they also had some problems getting clear title on a brand new house with a hold harmless agreement on it.

MITCHELL Is there any way that you can repair that sewer from the inside without having to expose that pipe?

BLAIN Sometimes, there is new technology depending on what happened to the sewer and why it failed.

MITCHELL Which of the three options do you prefer?

BLAIN I would prefer Option 1, for a combination of reasons, and one of which is that it does not require any additional easement from the adjacent property owner. Option 4 that we didn't show here would come off that existing manhole, has some advantages to it, but again from a staff perspective we didn't think it was appropriate for us to go out there and require an adjacent property owner give easement to correct for an error that was not their making. Option 1 gives us the furthest separation from the sewer line and the existing house.

MITCHELL And the house on the east?

BLAIN The house on the east with the Option 1 is not a factor. We have plenty of separation from it.

GAROFALO With this Option 2 here you say that can be done in the current easement?

BLAIN That could be done in the current easement, but we like Option 2 less because it provides less separation. You are bothering to relocate that sewer to get it moved from the house but you will still be building the same number of manholes either way.

GAROFALO There is one manhole on the east property now?

BLAIN With this option you would be building a manhole on the east property either way. Either on the north end of their property or in the middle of the lot but one additional manhole has to be built in the east property.

GAROFALO So under this Option you would still have to put a second manhole on the east property?

BLAIN Yes.

DOWNING Could you put Option 1 on the screen again?

BLAIN With Option 1 you have the same number of manholes, but it does give us more separation from the building, which was the original purpose of relocating that line.

JOHNSON From the existing manhole, from the top there to the street along Mt. Carmel, how long is that line? About 100 feet?

BLAIN A little over 100 feet of total sewer will have to be reconstructed.

JOHNSON Is there anything you could do there beside a manhole, maybe an observation?

BLAIN No, not with the change in direction with an 8-inch line.



TIM MALONE, MALONE CONSTRUCTION Either Option 1 or Option 2 will work for us, but Option 4 is not optional. I request Option 1 or Option 2. That will allow us to proceed. Although the neighbor to the east thinks it was a negligent problem on our part, I will mention that the homeowner even had a survey from a licensed survey company, and on that survey that easement was not listed. We want to get the problem resolved.

ROBERT KAPLAN, Attorney It seems to me the victim of what was an unavoidable error ought not to bear the consequences of the error. We are willing to do two things, and they both involve the dedication of additional easement. We can come from the existing manhole so we don't have to build a new manhole, if this is not too close to the house. When we vacate this portion of the easement that is too close to the house and put the line within four feet. We are willing to dedicate a corresponding amount of easement on the east side. This is a brand new line that was put in 2001, but this is not likely to need maintenance for a long time.

GAROFALO You are saying Option 2 with an additional easement is what you would prefer?

KAPLAN I am saying that if you don't want to come to Sheridan, this can be done, and this was the motion that was originally made by Commissioner McKay before we ended up with a deferral to bring it up to Sheridan and the builder said it was too much money.

GAROFALO I asked Mr. Blain if an additional manhole would be needed, and he said yes.

KAPLAN We don't want this manhole, and we would avoid that if we picked up the additional easement that the City loses on the builder's side on the west side. Or we dedicate easement in this configuration, and come out of the existing manhole, and Mr. Blain is okay with that as long as this manhole isn't in violation by being too close to the house and we don't know that.

BISHOP The original fix would require two manholes on the property owner's property. The one on the north there is the existing manhole. Where was the second one proposed to be, within 10 feet of each other?

KAPLAN Yes, very close proximity.

MARNELL Mr. Blain, could the proposal to add the easement just to the east to compensate for what has gone in at the west, will that work for you?

BLAIN If we are speaking about leaving sewer where it is now? No. We don't feel that there is space enough there regardless of how much easement there is. The line where it is sitting is too close to the house for us to maintain.

MARNELL So you are worried of potential damage to the house if you opened up an eight-foot hole next to a basement wall?

BLAIN Correct.

MARNELL Would it be fair to assume that existing manhole at the top right on that drawing is in a proper place today?

BLAIN The existing east manhole? Yes. The question is if we run a line southwest from that existing manhole, I do not know how close the house on the east side is to that, and whether or not we can dedicate enough easement to get that coverage for that line. That hasn't been surveyed out, and we are assuming that might be able to happen, but I don't know for sure if that is achievable. It probably is.

MARNELL I assume your worry there is that you would be creating the same problem with the structure on the east side that you are trying to avoid on the west side.

BLAIN Correct, that is possible. We did not pursue that option too much in our determinations because it does require additional easement, and we knew that from the existing property owner, and we were trying to lay out options that cause the least distribution or the least property acquisition from the existing property owner.

MCKAY Aren't the houses on the east side of this; don't they have to adhere to 20 foot away from the back property line?

BLAIN I don't know the answer of how close it is from the property line. The house that is there, it is only 5 feet from the property line.

MCKAY I'm talking about existing building across on the east side.

MARNELL Mr. Blain, if we deferred this case until later in this meeting, can you obtain the information you need to know whether or not that this option would work by moving it over to the eastern manhole and having the homeowner grant you that easement in that corner?

BLAIN I do not know if there's a plot plan up here for that plot on the east. Because if we don't have a plot plan that shows where that house sits on the east lot, no I can't give you that answer.

MARNELL If you left and went somewhere to look for that plot plan, could you come back and tell us whether or not you have it and whether this will work, because I don't want to defer this to another meeting, if we can avoid it.

BLAIN Yes, we would try to get that yet this afternoon.

MARNELL How long will that take you to find us that answer?

BLAIN Maybe within 15 minutes we should be able to know if there is a plot plan available.

JOHNSON That easterly manhole in that easement is in an easement now. This would be another option if the owner of the property to the east is willing to dedicate additional easement on his property. What if that line ran straight down to Mt. Carmel, set a manhole and then come back over and set another manhole. You still are out two manholes. It is in the easement...

BLAIN What happens is that line was offset so that existing manhole is not centered in the north/south easement, so there is not easement south of it.

JOHNSON If he's willing to give that, it looks like to me that we can make a motion to either have the two manholes and run the thing parallel.

BLAIN We can't go parallel. We do have to go back and tie into the existing line.

JOHNSON I am saying set another manhole east of the one on the south, and make your jog back over to your line there.

BLAIN That would require building two manholes on Mt Carmel.

JOHNSON Right. If this plan didn't work that they have already suggested, I think it's a good deal that the owner to the east is willing to give additional easement, and coming up with the option and save the cost of an additional manhole if that will work and satisfy you. But if that didn't work for you, it looks to me if it ran parallel to the existing sewer line and you had two manholes on Mt. Carmel.

BLAIN The property owner to the east would have dedicate quite a bit more easement for that configuration.

JOHNSON I believe this plan that they came back with to come back to that manhole will work.

BLAIN If we can find a plot plan to determine if we can slide that to the existing east manhole, and the property owner to the east is will to look at providing that easement, we would try to get that information back to you yet this afternoon.

**MOTION:** To defer until later in the meeting.

**MARNELL** moved, **DUNLAP** seconded the motion, and it carried (10-0).

BLAIN This is the plot plan to the house to the east and with that east manhole at that location we can't run back to the southwest without going through the house. So we are back to Option 1 with the offset manhole in the middle of the lot or the Sheridan option.

MCKAY Has the applicant and the neighbor came to an agreement?

KAPLAN I believe we are in agreement with the builder and with his client to take one last deferral on this. There are other options such as hold harmless agreements that can be explored.

**MOTION:** To defer 2 weeks.

**MITCHELL** moved, **BISHOP** seconded the motion.

JOHNSON Is there a way that line could be encased in concrete?

BLAIN To encase it right now would require digging it all up. There are a variety of things that can happen that cause a sewer to fail.

**MOTION CARRIED:** 10-0

5-2. **VAC2004-12 – Request to Vacate Platted Building Setbacks and a Utility Easement (Dedicated by Separate Instruments), for property located south of Kellogg and east of Greenwich Road.**

**OWNER/APPLICANT:** Wichita East LLC c/o Owen Buckley

**AGENT:** Baughman Company PA c/o Russ Ewy

**LEGAL DESCRIPTION:** The south and east 25-feet of the platted 35-foot platted setback as shown on the exhibit, generally located on a portion of the north and west sides of Lot 2, Block A, One Kellogg Place 2<sup>nd</sup> Addition.

The south 10-feet of a 20-foot easement dedicated by separate instrument, generally running parallel to the north side of Lot 2, Block A, One Kellogg Place 2<sup>nd</sup> Addition and contained within the platted 35-foot setback on said property

**LOCATION:** Generally located southeast of the Greenwich Road – Kellogg Avenue/US-54 intersection.

**REASON FOR REQUEST:** Proposed development of the site

**CURRENT ZONING:**

Subject property and properties north and east of the site are zoned "LI" Limited Industrial. Properties west of the site are zoned "GC: General Commercial and "LC" Limited Commercial. Properties south of the site are zoned "LC" & "LI".

The applicant is requesting consideration for the vacation of the south and east 25-feet of the platted 35-foot platted setback as dedicated on Lot 2, Block A, One Kellogg Place 2<sup>nd</sup> Addition. Setbacks for the "LI" district in the UZC includes a minimum of zero feet for the rear and street side setbacks, zero feet or a minimum of 5-feet, if provided, for interior side setbacks and 20-feet for a front setback. The applicant also proposes to vacate the south 10-feet of a 20-foot easement dedicated by separate instrument generally running parallel to the north side of the subject site and contained within the previously mentioned platted setback. There is no water or sewer in the easement. The site is located in CUP DP-196. One Kellogg Place 2<sup>nd</sup> Addition was recorded with the Register of Deeds May 15, 2001.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the easement dedicated by separate instrument and the portions of the platted setbacks as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time April 1, 2004, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of the easement dedicated by separate instrument and the portions of the platted setbacks and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the easement dedicated by separate instrument and the portions of the platted setbacks described in the petition should be approved with conditions;
- (1) Provide staff with a copy of the recorded easement dedicated by separate instrument. Vacate the south 10-feet of the easement and retain the north 10-feet of the easement
  - (2) Vacate 25-feet of the south and east portions of the platted 35-foot setbacks as described in the legal description. The subject site is located within CUP DP- 196; vacation of the platted setbacks requires an adjustment to the CUP. If the adjustment has been completed, provide staff with a copy of the signed approval letter.
  - (3) Provide staff with accurate legal descriptions of the proposed vacated setbacks and easement.
  - (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  - (5) All improvements shall be according to City Standards.
  - (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide staff with a copy of the recorded easement dedicated by separate instrument. Vacate the south 10-feet of the easement and retain the north 10-feet of the easement
- (2) Vacate 25-feet of the south and east portions of the platted 35-foot setbacks as described in the legal description. The subject site is located within CUP DP- 196; vacation of the platted setbacks requires an adjustment to the CUP. If the adjustment has been completed, provide staff with a copy of the signed approval letter.
- (3) Provide staff with accurate legal descriptions of the proposed vacated setbacks and easement.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (5) All improvements shall be according to City Standards.
- (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **MCKAY** seconded the motion, and it carried (10-0).

5-3. **VAC2004-13 – Request to Vacate a Platted 20-Foot Easement, located northeast of the Webb Road/13<sup>th</sup> Street North intersection.**

**OWNER/APPLICANT:** Hutton & Hutton Law Firm LLC

**AGENT:** MKEC Engineering Consultants c/o Brian Lindebak

**LEGAL DESCRIPTION:** Platted 20-foot easement, per the exhibit, located on the east side of Lot 2, Block 2, the Waterfront Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located midway between 13th Street North and 21<sup>st</sup> Street North on the east side of Webb Road at the Webb Road and the Waterfront Parkway intersection.

**REASON FOR REQUEST:** Redevelopment of site associated with lot split.

**CURRENT ZONING:** Subject property and all adjacent or abutting properties are zoned "LI" Limited Industrial, except for the properties north of site, across railroad tracks, which are zoned Sf-5 single-family residential

The applicant proposes vacation of the platted 20-foot utility easement located on the east side of a portion Lot 2, Block 2, The Waterfront Addition. A lot split, approved January 21, 2004, divided Lot 2 into a Tracts A & B. The platted easement is located on the east side of Tract B. There is no water or sewer in the easement. The applicant has submitted sewer plans for review and approval. The Waterfront Addition was recorded January 24, 2003. There is a scheduled public hearing for consideration of preserving the railroad ROW that abuts the site's north side for a bike path, Monday, April 19, 2004, 7:00 PM, in the Council Chambers; see attached exhibit. In consideration of this possible federal "Rails to Trails" program Staff did make a verbal request that access be provided to the railroad ROW for bikers.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works and other utility representatives, Planning Staff recommends approval to vacate the platted easement as shown on the exhibit with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time April 1, 2004 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted easement and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted easement described in the petition should be approved with conditions;
- (1) Provide Staff with a copy of the easements dedicated by separate instrument that will cover the sewer line, as approved by Public Works/Water & Sewer.
  - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  - (3) All improvements shall be according to City Standards.
  - (4) Provide signature of property owner on application and petition.
  - (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a copy of the easements dedicated by separate instrument that will cover the sewer line, as approved by Public Works/Water & Sewer.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
3. All improvements shall be according to City Standards.
4. Provide signature of property owner on application and petition.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **MCKAY** seconded the motion, and it carried (10-0).

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❖ **PUBLIC HEARING — ZONING ITEMS**

- 6a. **Case No.: CUP2004-09 DP274 (Associated with ZON2004-14)** – Slawson Commercial Properties, LLC, c/o George Sherman (owner); Professional Engineering Consultants, PA, c/o Rob Hartman (agent) Request Creation of The Oak Creek Community Unit Plan on property described as;

and

- 6b. **Case No.: ZON2004-14 (Associated with CUP2004-09 DP274)** – Slawson Commercial Properties, LLC, c/o George Sherman (owner); Professional Engineering Consultants, PA, c/o Rob Hartman Request Sedgwick County Zone change from "SF-20" Single-family Residential to "SF-5" Single-family Residential, "NO" Neighborhood Retail, "GO" General Office and "LC" Limited Commercial on property described as;

Parcel 1:

A tract of land in the NW 1/4, of the NE 1/4, Section 9, Township 27 South, Range 2 East of the 6th P.M, Sedgwick County, Kansas described as: Beginning at the Northeast corner of the NW 1/4, of the NE 1/4; thence bearing S00 degrees 41'52"E along the East line of said NW 1/4 of the NE 1/4, a distance of 658.42 feet; thence bearing S89 degrees 13'29"W a distance of 614.84 feet to a point on a non-tangent curve to the left having a radius of 1200.00 feet and chord bearing N26 degrees 13'56"W; thence along said curve through a central angle 01 degrees 49'05", an arc distance of 38.08 feet to the beginning of a curve to the right having a radius of 350.00 feet, and chord bearing N01 degrees 01'08"W; thence along said curve through a central angle of 52°14'41", an arc distance of 319.14 feet to the beginning of a curve to the left having a radius of 400.00 feet and chord bearing N12 degrees 03'38"E; thence along said curve through a central angle 26 degrees 05'09", an arc distance of 182.11 feet; thence bearing N00 degrees 58'57"W a distance of 137.67 feet to the North line of the NW 1/4 of the NE 1/4; thence bearing N89 degrees 01'03"E along the North line of the NW1/4, of the NE1/4, a distance of 593.81 feet to the Point of Beginning. Encompassing 412,666 square feet or 9.473 acres more or less.

Parcel 2:

A tract of land in the NW 1/4, of the NE 1/4, Section 9, Township 27 South, Range 2 East of the 6th P.M, Sedgwick County, Kansas described as: Beginning at the Southeast corner of the NW 1/4, of the NE 1/4; thence bearing S88 degrees 57'55"W along the South line of said NW1/4, of the NE1/4, a distance of 518.37 feet to the beginning of a non-tangent curve to the left having a radius of 1200.00 feet and chord bearing N08 degrees 50'45"W, thence along said curve through a central angle of 32 degrees 57'19", an arc distance of 690.21 feet; thence bearing N89 degrees 13'29"E a distance of 614.84 feet to the East line of the NW 1/4 of the NE 1/4; thence bearing S00 degrees 41'52"E along said East line, a distance of 671.65 feet to the Point of Beginning. Encompassing 358,820 square feet or 8.237 acres more or less.

Parcel 3:

A tract of land in the NW 1/4, of the NE 1/4, Section 9, Township 27 South, Range 2 East of the 6th P.M, Sedgwick County, Kansas described as: Beginning at the Northwest corner of the NW 1/4, of the NE 1/4; thence bearing S00 degrees 37'46"E along the West line of the NW 1/4 of the NE 1/4, a distance of 274.01 feet; thence bearing N89 degrees 01'03"E a distance of 707.61 feet to a point on a non-tangent curve to the left having a radius of 400.00 feet and chord bearing N08 degrees 58'55"E; thence along said curve through a central angle 19 degrees 55'43", an arc distance of 139.13 feet; thence bearing N00 degrees 58'57"W a distance of 137.67 feet to the North line of the NW 1/4 of the NE 1/4; thence bearing S89 degrees 01'03"W along said North line, a distance of 729.87 feet to the Point of Beginning. Encompassing 199,145 square feet or 4.571 acres more or less.

Parcel 4:

A tract of land in the NW 1/4, of the NE 1/4, Section 9, Township 27 South, Range 2 East of the 6th P.M, Sedgwick County, Kansas described as: Beginning at the Southwest corner of the NW 1/4, of the NE 1/4; thence bearing N88 degrees 57'55"E along the South line of the NW1/4 of the NE1/4, a distance of 806.90 feet to the beginning of a non-tangent curve to the left having a radius of 1200.00 feet and chord bearing N09 degrees 45'17"W; thence along said curve, through a central angle 34 degrees 46'24" an arc distance of 728.29 feet to the beginning of a curve to the right having a radius of 350.00 feet; and chord bearing N01 degrees 01'08"W; thence along said curve through a central angle 52 degrees 14'41", an arc distance of 319.14 feet to the beginning of a curve to the right having a radius of 400.00 feet and chord bearing of N22 degrees 01'29"E; thence along said curve through a central angle of 6 degrees 09'26", an arc distance of 42.98 feet; thence bearing S89 degrees 01'03"W, a distance of 707.61 feet to the West line of the NW 1/4 of the NE 1/4; thence bearing S00 degrees 37'46"E along said West line, a distance of 1057.28 feet to the Point of Beginning.

Encompassing 791,786 square feet or 18.176 acres more or less. Generally located South of 21<sup>st</sup> Street North approximately 1/4 mile west of Greenwich Road.

**BACKGROUND:** The applicant is requesting to create DP-274 Oak Creek Community Unit Plan, which would be a 39-acre development with four parcels located south of 21<sup>st</sup> Street North approximately one-fourth mile west of Greenwich Road. The

proposed development coordinates with the adjoining community unit plan approved as DP-266 The Woodlands C.U.P. currently under the same ownership. Together, DP-274 and DP-266 consist of a quarter section (160 acres) of land.

Parcel 1 (8.12 acres) is proposed for "LC" Limited Commercial and is located along 21<sup>st</sup> Street North south of the land being developed with a new SuperTarget and the southern tip of the Regency Lakes residential subdivision. Parcel 1 abuts an "LC" parcel of DP-266 to the east. The types of uses would be those permitted by right in "LC" **except:** group homes; correctional placement residences; vehicle storage yards; vehicle repair, general; outdoor storage; pawn shops; taverns; nightclubs; asphalt or concrete plants; adult entertainment; service stations; convenience stores with gas islands; and drinking establishments. No restaurants with drive-in service would be allowed within 200 feet of residentially zoned property.

Parcel 2 (7.71 acres) is proposed for "GO" General Office. It is located south of Parcel 1 and abuts a "GO" on DP-266. A proposed collector separates Parcels 1 and 2 from Parcels 3 and 4, and links DP-274 to the southwest portion of DP-266.

Parcel 3 (3.36 acres) is proposed for "NO" Neighborhood Office is located between the proposed "LC" parcels to the east and Remington Place Office Park being developed to the west, which is also zoned "NO". Parcel 3 would allow all "NO" uses permitted by right **except:** group homes, recycling stations, and asphalt or concrete plants. Individual tenants would be limited to 18,000 square feet of gross floor area.

Parcel 4 (17.35 acres) is proposed for "SF-5" Single-family Residential and allows single family, patio homes, zero lot line homes and townhouses. Density would be 8.6 dwelling units per acre, for a maximum of 150 units.

Maximum building coverage and gross floor area is 20 percent for Parcel 1 and 25 percent for Parcels 2 and 3. This is well below the customary 30 percent coverage and 35 percent gross floor area typical of C.U.P.s. Maximum height is 45 feet for Parcel 2 and 35 feet for remaining parcels. Setbacks are 35 feet for Parcel 3, the standard requirement for C.U.P.s.

Parcels 1 and 2 have setbacks of 35 feet along streets but none shown on the other property lines. Parcel 4, the residential tract, has a setback of 25 feet. The lack of setbacks on exterior property lines requires governing body approval since it would override the standard 35-foot C.U.P. nonresidential minimum setback. The developer has requested these setbacks be omitted to add flexibility in developing the parcels jointly with the parcels in DP-266 to the east and south.

Architecture is to be consistent within Parcel 1, consistent within Parcel 3, and prohibit predominately metal facades on all parcels. Parking lot elements would be consistent for commercial uses and for office uses. Screening walls would be required for commercial adjacent to residential use and landscape buffers or screening walls for office and multi-family use adjacent to "TF-3" or "SF-5", with the exception that a landscaping buffer with a minimum width of 15 feet and plant materials of at least one shade tree and five shrubs per 30 linear feet (one-third evergreen) may be provided in lieu of the solid masonry wall.

Freestanding monument style signs on 21<sup>st</sup> Street North would be up to 30 feet in height and 300 square feet in size. Other monument signs on 21<sup>st</sup> Street North would be limited to 20 feet in height and a maximum size of 200 feet per single sign. Maximum signage on 21<sup>st</sup> Street North for Parcel 1 would not exceed 0.8 times lineal frontage for Parcel 1 and 0.5 times lineal frontage for Parcel 3. On the collector street, monument signage would be limited to eight feet in height and 50 square feet in size with no more than two per parcel. Other sign requirements limit window signage to 25 percent of the window area, prohibit wall signs on the rear of buildings facing residentially zoned districts, and prohibit off-site and portable signs.

Cross-lot circulation is required of all adjacent commercial parcels and a pedestrian circulation plan is required for all parcels.

The site is currently a large estate with a single-family residence located on proposed Parcel 1. Most of the surrounding area is under development that is transforming this area to a highly developed corridor along 21<sup>st</sup> Street North and Greenwich from K-96 southward. The property to the north of 21<sup>st</sup> Street North is DP-234 Regency Lakes C.U.P. and a SuperTarget is under construction for the largest parcel of the C.U.P. As previously mentioned, the 120-acre tract to the east and south is DP-266 The Woodlands, which is approved for commercial, office and residential use and intended to be tied together with this development. It is in the same ownership. The property to the west, Remington Place, is zoned "NO" and "SF-5" and developing with an office park along 21<sup>st</sup> and single-family residential on the balance of the development. Tallgrass East, zoned "SF-5" in single-family use, is located to the northwest. Regency Lakes, zoned "SF-5" in single-family use is located to the northeast. Chaucer Estates (PUD #2), an assisted living facility, is located to the north.

**CASE HISTORY:** The property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LC"; "SF-5"; "PUD"	Retail under construction, single-family, assisted living
SOUTH:	"SF-20"	Vacant
EAST:	"SF-20"	Vacant
WEST:	"SF-5"; "NO"	Single-family under construction, office park

**PUBLIC SERVICES:** 2002 traffic counts for 21<sup>st</sup> Street North were 4,241 cars per day. The 2030 projection for 21<sup>st</sup> Street North was 22,000 vehicles per day. However, these projections do not account for proposed and likely new developments that are being discussed in this vicinity. These developments would likely have increased the projections for traffic volumes significantly. A traffic study for the 21<sup>st</sup>/Greenwich corridor was recently completed to identify improvements needed to accommodate increased traffic in the corridor, but the study did not include specific recommendations west of the Target site.

Currently, 21<sup>st</sup> Street North is improved as a four-lane arterial street with center left-turn lane to on the eastern edge of the tract. The C.U.P. proposes a collector street intersecting with 21<sup>st</sup> Street North and three additional openings. One would be right-in/right-out only. The street aligns with Regency Lakes Street.

Other normal public services are available.

**CONFORMANCE TO PLANS/POLICIES :**

The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential".

**Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development, but expands the limits of commercial use beyond that shown on the Land Use Guide.

**Residential Objective II.A.1** seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering. The proposed C.U.P. would allow for residential development meeting these objectives.

**RECOMMENDATION:** The overall amount of commercial development being requested exceeds expectations of the Land Use Guide. The recent traffic study anticipated this requested intensification and looked at needed transportation improvements to accommodate development on the site. The layout of parcels and uses provides good interface with similar types of uses to the northeast and east for Parcel 1, but conflicts with the small patch single-family lots directly to the north on 21<sup>st</sup>. The proposed uses of Parcel 2 for office, Parcel 3 for neighborhood-scale office, and Parcel 4 is the same as the proposed or developing uses on the adjoining parcels. Overall, the land use pattern is planned to provide good separations and buffers between different intensities of uses.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2004-00014), subject to platting of the entire property within one year;
- B. APPROVE the Community Unit Plan (DP-274), subject to the following conditions:
  - 1. The applicant shall provide a guarantee for a continuous accel/decel lane on 21<sup>st</sup> Street North at time of platting.
  - 2. Access controls: Access controls shall be in accordance with the Access Management Policy, and shall include the following: The CUP must ensure that private drive openings are not impacted/ blocked by the layout of parking stalls or landscaping.
  - 3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  - 4. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
  - 5. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
  - 6. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-274) includes special conditions for development on this property.
  - 7. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Most of the surrounding area is under development that is transforming this area to a highly developed corridor along 21<sup>st</sup> Street North and Greenwich from K-96 southward. The property to the north of 21<sup>st</sup> Street North is DP-234 Regency Lakes C.U.P. and a SuperTarget is under construction for the largest parcel of the C.U.P. As previously mentioned, the 120-acre tract to the east and south is DP-266 The Woodlands, which is approved for commercial, office and residential use and intended to be tied together with this development. It is in the same ownership. The property to the west, Remington Place, is zoned "NO" and "SF-5" and developing with an office park along 21<sup>st</sup> and single-family residential on the balance of the development. Tallgrass East, zoned "SF-5" in single-family use, is located to the northwest. Regency Lakes, zoned "SF-5" in single-family use is located to the northeast. Chaucer Estates (PUD #2), an assisted living facility, is located to the north.
- 2. The suitability of the subject property for the uses to which it has been restricted: The area is rapidly developing. "SF-20" Single-family Residential with large lots is inappropriate. If annexed, the land would automatically become "SF-5" unless a different zoning was requested, which is more suitable than "SF-20".
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The most significant impact is probably to the cluster of single-family lots along the north side of 21<sup>st</sup> in Regency Lakes.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies

this area as appropriate for "low density residential". **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development, but expands the limits of commercial use beyond that shown on the Land Use Guide. **Residential Objective II.A.1** seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering. The proposed C.U.P. would allow for residential development meeting these objectives.

5. Impact of the proposed development on community facilities: Traffic increases from the development would be addressed by accel/decel, possible left-turn lane and possible signalization.

DONNA GOLTRY Planning staff, I was a little bit sloppy on the regulations for the Sign Code in relation to Parcel 3, the "NR" Neighborhood Retail Parcel because it stated that all sign would be 150 feet apart, but did not explicitly say the signs would be per "GO/NR" signage regulations. I have talked to the applicant, and he had offered three signs no larger than 96 square feet each.

MARNELL Where on the staff report is this?

GOLTRY It would be a change to the CUP document that you have attached, and it would be on General Provision 7F to add that the 200 square feet per sign for Parcel 1 and 96 square feet for Parcel 3 with a total of three signs on Parcel 3 on 21<sup>st</sup> Street.

MARNELL Is the applicant in agreement?

SHERMAN I am in agreement.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (10-0).

7. **Case No.: CON2004-14** – Crosswinds Aviation, Inc. c/o Greg Thomas and Steve Logue (owner/applicant); Benchmark Land Survey c/o Chad Abbott (agent) Request Sedgwick County Conditional Use for expansion of the Cook Airfield on property zoned "RR" Rural Residential on property described as;

The East Half of the Southwest Quarter of Section 35, Township 28 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas. Generally located At the northwest corner of 71<sup>st</sup> Street South and 143<sup>rd</sup> Street East

**BACKGROUND:** The applicant owns Cook Field, a public use airport on an 80-acre unplatted tract that is zoned "RR" Rural Residential and is located at the northwest corner of 71<sup>st</sup> Street South and 143<sup>rd</sup> Street East. According to aerial photographs, Cook Field has been in operation on the subject property since prior to 1960 and was developed in its current configuration in 1985 when the property was first zoned "RR" Rural Residential. In 1985, Cook Field became a legal non-conforming use, as an airport requires approval of a Conditional Use in the "RR" Rural Residential zoning district. Non-conforming uses may expand by up to 30 percent of the floor area; however, the applicant proposes to more than double the floor area of hangars for the airport (see attached hangar list). The property must conform with the zoning regulations to permit the proposed expansion; therefore, the applicant has requested approval of a Conditional Use for a public use airport on the subject property.

The attached site plan shows the proposed expansion of Cook Field. The proposed expansion is for facility improvements only and does not include any additional land area. The existing hangars are illustrated on the site plan in gray, and the applicant proposes to remodel, expand, and/or replace the existing hangars. The applicant also proposes to construct additional hangars and other support buildings as illustrated on the site plan. The site plan indicates that the existing paved runway and taxiways will be repaved and that additional paved taxiways will be constructed. The applicant proposes six residential lots with accessory hangars to be served by an existing grass runway and proposed new grass taxiway. Easements are proposed on the residential lots to keep structures away from runways and taxiways. A heliport also is proposed, and it may be approved as part of this request. However, the underlying zoning of the area to be used as a heliport will need to be changed to at least the "B" zoning district before the heliport will be permitted by the zoning regulations.

The character of the surrounding area is rural with the airport, agriculture, and large-lot residential uses being the predominate uses in the area. All of the surrounding properties are zoned "RR" Rural Residential.

**CASE HISTORY:** The subject property is a legal non-conforming public use airport.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR"	Large-lot residential
EAST:	"RR"	Agriculture
SOUTH:	"RR"	Agriculture
WEST:	"RR"	Agriculture



**PUBLIC SERVICES:** The subject property has access to 71<sup>st</sup> Street South and 143<sup>rd</sup> Street East, which are unpaved section line roads. Additional right-of-way for the section line roads will need to be dedicated as part of the plat. The subject property is within the service area of Rural Water District #3. The subject property is served by on-site sewer service.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Rural" development. The "Rural" category is intended to accommodate agricultural uses and rural based uses that are no more offensive than normal agricultural uses. The proposed airport expansion is consistent with the Land Use Guide of the Comprehensive Plan.

**RECOMMENDATION:** Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to platting property within one year and subject to the following conditions:

1. The subject property shall be developed in general conformance with the approved site plan.
2. Operation of a heliport on the subject property shall be permitted only at such time as the underlying zoning of the area to use as a heliport is changed to a zoning district that permits a heliport as a Conditional Use.
3. Development and use of the subject property shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards.
4. The applicant shall submit four 24" x 36" folded copies of the approved site plan to the MAPD within 60 days after approval.
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is rural with the airport, agriculture, and large-lot residential uses being the predominate uses in the area. All of the surrounding properties are zoned "RR" Rural Residential. The proposed expansion of the airport is consistent with the zoning, uses, and character of the area.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The subject property has been used as a public use airport for more than 40 years with no apparent detrimental impacts on nearby property. The proposed expansion should improve conditions at the airport, which has deteriorated from a lack of maintenance.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Rural" development. This category is intended to accommodate agricultural uses and rural based uses that are no more offensive than normal agricultural uses. The proposed airport expansion is consistent with the Land Use Guide of the Comprehensive Plan.
4. Impact of the proposed development on community facilities: Any impacts on community facilities will be addressed through the platting process.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (10-0).

8. **Case No.: ZON2004-09** – Dorothy Mathew (owner); Trey Allen (contract purchaser); Mallard Real Estate (agent) Request Sedgwick County Zone change from "SF-20" Single-family Residential to "NR" Neighborhood Retail with a Protective Overlay on property described as;

The East 247 feet of the South 514.72 feet of the West Half of the Southwest Quarter of Section 1, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, except the South 80 feet thereof. Generally located 1100 feet east of 135<sup>th</sup> Street West, north side of 21<sup>st</sup> Street North.

**BACKGROUND:** The contract purchaser is seeking "NR" Neighborhood Retail zoning on 2.46 un-platted acres located approximately 520 feet east of Forrest View Street North and north of 21<sup>st</sup> Street. The application area has dimensions of 247 feet (east to west along 21<sup>st</sup> Street) by 434.72 feet (north to south), and is currently zoned "SF-20" Single-family Residential. Currently the application area is used for cropland production, however the applicant intends to develop the 2.46 acres with a photography studio (personal improvement service). The applicant proposes to locate an approximately 5,814 square foot studio on the site, with parking located in front of the studio. The exterior of the studio is proposed to have a log and stone cabin style exterior. Pathways and a patio are also proposed (see attached site plan).

The application area is part of a larger tract containing 31 acres for which the applicant is the contract purchaser. The balance of the site, zoned "SF-20," and not included in the application area, would be left undeveloped, except for a home site located in the northwest corner, near Forrest View Street North and north of a church. Also, a barn is to be built north of the application area.

Significant portions of the larger 31 acres are located within the Cowskin Creek floodplain. Southwestern portions of the tract appear to be located outside the floodplain. If this request is approved, appropriate minimum pad elevations and floodway reserves will need to be established.

Adjacent properties are all zoned "SF-20" Single-family Residential, and are used in a variety of ways: agricultural, outdoor recreation (Eberly Farms), large lot residential and church.

"Personal improvement services" are first permitted in the "GO" General Office zoning district subject to a Conditional Use. The "NR" Neighborhood Retail district is the first zoning district to permit the requested use, by right. The use will require parking at a ratio of 4 spaces per 1,000 square feet that will result in the need for 24 on-site spaces. Zoning screening will be required on the north, east and west sides of the application area. A 32 square-foot, 30 feet tall sign would be permitted. Office uses typically generate 11 trips per day per 1,000 square feet. This site could generate up to 60 plus trips per day.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Single-family Residential"; cropland  
SOUTH: "SF-20" Single-family Residential"; outdoor recreation/large-lot residential  
EAST: "SF-20" Single-family Residential"; cropland  
WEST: "SF-20" Single-family Residential"; church

**PUBLIC SERVICES:** Municipal sewer is located along the south side of 21<sup>st</sup> Street. Municipal water is also located along the south side of 21<sup>st</sup> Street. 21<sup>st</sup> Street is a paved two-lane facility that is depicted on the 2030 "Transportation Plan" as being a 4-lane arterial. There are approximately 80 feet of half-street right-of-way at this location. This site is in the County; on-site services may be an option.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide depicts this site as appropriate for "low-density residential" uses, however the property is also located within the City of Wichita's 2010 "urban service area." Consistent with that designation, public sewer and water services are available. The purpose statement for the "NR" Neighborhood Retail district states that this district is intended to accommodate very-low intensity retail and office development and other complementary land uses that serve and are generally appropriate near residential neighborhoods. This district is intended for use in areas of unincorporated Sedgwick County that have been designated as "urban service areas."

**RECOMMENDATION:** This application area is a somewhat difficult site due to deal with since surrounding properties have been developed, it is not located at the corner of arterial or even collector streets and is significantly impacted by the Cowskin Creek floodplain. The applicant proposed to develop a small portion of the overall site with a low intensity use that requires non-residential zoning. Some of the uses permitted by-right in the "NR" district would not necessarily be compatible at this location, so a protective overlay is proposed. Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to platting within 1-year and the following Protective Overlay conditions:

- A. Uses on the site are restricted to those permitted by right in the "NO" Neighborhood Office district plus portrait shop and photography studio.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All property surrounding the application area are zoned "SF-20" Single-family Residential and used for a variety of uses: church, outdoor recreation, agricultural and large-lot residential. Currently the character of this area is suburban, and now that public sewer and water services are available, more intense development is expected.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-20" Single-family Residential. The "SF-20" district is primarily a suburban residential district that also allows a few complimentary nonresidential uses. The site could be developed as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed restrictions minimize any detrimental affects on nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide depicts this site as appropriate for "low-density residential" uses, however the property is also located within the City of Wichita's 2010 "urban service area." Consistent with that designation, public sewer and water services are available. The purpose statement for the "NR" Neighborhood Retail district states that this district is intended to accommodate very-low intensity retail and office development and other complementary land uses that serve and are generally appropriate near residential neighborhoods. This district is intended for use in areas of unincorporated Sedgwick County that have been designated as "urban service areas."
5. Impact of the proposed development on community facilities: Existing or planned facilities are in place to adequately address the proposed development's needs.

DALE MILLER Planning staff The applicant is aware that this area is covered by floodplain. In fact, the day they came in to talk to us about whether we would support this request they brought in photographs that showed how much was under water after that last four inch rain that we had, and big chunks of this was under water. So they are aware that there are drainage issues on the site. The reason we were somewhat restrictive on the Protective Overlay is, typically with this not being a corner location, we would not necessarily support commercial or retail zoning, since it is kind of a mid-mile location. But given the development pattern that has already happened here, where the corners are already taken up with residences, and a church, and the fact that there is floodplain here, that seemed to us that this is a good solution for a piece of ground that has a large amount of floodplain on it. It would theoretically remain undeveloped, and not impact folks downstream to the same extent as if someone came in and wanted to fill the areas that are a potential to be filled. It seemed like this request was a low traffic generator.

BARFIELD Dale, in recommendation #1 it states here that currently the character of this area is suburban, and now that public sewer and water services are available, more intense development is expected; what type of development is expected?

MILLER This corner here has already been zoned "LC" Limited Commercial, and there are some City of Wichita facilities that have been developed, but there are chunks that are vacant. Typically, as the City has grown west and services have become available, there has been more pressure, particularly on 21<sup>st</sup> Street, to develop. But as you know, the Comprehensive Plan says those more intense uses should be more focused around the intersection of section line roads. So, I think that it is more likely there would be more pressure for these corners to redevelop than it would be in here (pointing to the map). But given the fact that this is a vacant piece of ground (the application area) it is attractive (for commercial development). We have had several people come in and try to get "LC" Limited Commercial zoning on there, in the past, and for whatever they have not come back. Maybe, partially due to the fact that we were not all that supportive, given its (the application area) location.

BARFIELD You would anticipate more "LC" Limited Commercial development?

MILLER Yes, over time, but based on the policy we wouldn't support "LC" Limited Commercial at the mid-mile locations.

MITCHELL The sketch plan indicates one access to 21<sup>st</sup> Street for this particular site?

MILLER Yes.

MITCHELL Is there another one for the barn site?

MILLER The barn site, they are showing it coming off here. Are you taking both of those as one access point?

MITCHELL That is my question.

MILLER This is un-platted property, so they would have to plat, and at the time of platting they would probably want to restrict that to one access point.

MITCHELL There are some drainage issues on the north side of 21<sup>st</sup> Street. The greater the number of entrances off of 21<sup>st</sup> the greater that problem becomes. Staff comments indicates that there is 80 feet of half -street right-of-way at this location, how much of that is the city water line right-of-way?

MILLER I don't know, I just did the measurement off the aerial.

MITCHELL So the line coming from Cheney runs in that right-of-way and adjacent to 21<sup>st</sup> Street, all that 80 feet would not be available for highway purposes and drainage and those things. Because of that I think there maybe a possibility that an adjacent drainage easement might be requested at the time of plat.

BISHOP What other type of uses would be available within "NO" Neighborhood Office.

MILLER Typically there would be the office uses, insurance, doctors, dentist, and single-family and the others listed there.

ROD COKER, P O BOX 49405, Wichita, KS 67201, Architectural Development Services We are aware of the floodplain issues on this site. We were going to try and accommodate this by also creating an engineered pond lake area for retention, and create a spillway that would also help control some of the runoff in the area. We knew there would be access limitation to 21<sup>st</sup> Street because of the drainage issue and the control, so we did accommodate by putting in a single access point to this site. The barn is more closely related to the residence as opposed to the Neighborhood Retail rezoning site.

RAY BOESE, 13414 W. 23<sup>rd</sup> Street North, Wichita, KS 67223 I object to this zoning for the simple reason there are a lot of ifs, ands, and buts. There is a lot of land to be purchased and no comment to what could happen to that land. Until those issues are resolved. There has been nothing said about easement. I did all of the footwork to put in a Township Road out there, back in 1983. Again in 1985, he agreed to put the road in there, and nothing has ever been done. This is just a lane in front of our houses.

MARNELL Is your property the east one of those two sections to the north?

BOESE I own both of those lots. As far as the floodplain, I think anytime you dig a ditch, or move dirt you create problems, upstream and downstream, and we have enough problems with Dry Creek.

MARNELL They will resolve those issues at platting.

TREY ALLEN I will live on this property. I have talked to Mr. Boese about this on three different occasions. I have told him I don't want to own his front yard. I would be happy to sell them to the middle of the road so they would own part of that. We have Eberly Farms across the street. They are a similar type of business. They have weddings and photography going on there all of the time. I can't move my business too far out into the country. We are an upper end studio. I don't want a trailer park built. The land to the east of me is otherwise useless land, and I would like to make a decent, nice usage of it.

MCKAY Why couldn't this gentlemen get a Conditional Use, instead of re-zoning?

SCHLEGEL Because of the "GO" General Office zoning would not permit a Conditional Use.

MITCHELL Why a Protective Overlay instead of a Community Unit Plan?

MILLER He is only rezoning 2.6 acres, which is underneath the 6 acres trigger.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **DOWNING** seconded the motion, and it carried (10-0).

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9. **Case No.: ZON2004-10** – John and Charlotte Hendrick Request Zone change from “SF-5” Single-family Residential to “TF-3” Twofamily Residential on property described as;

Lots 5 through 9, inclusive, Garden Meadow Addition, Wichita, Sedgwick County, Kansas. Generally located Northwest of Douglas-127<sup>th</sup> Street East Street intersection.

**BACKGROUND:** The applicants request a zone change from “SF-5” Single-Family Residential to “TF-3” Two-Family Residential on Lots 5 – 9, of the Garden Meadows Addition. Lots 1 – 4 of the Garden Meadows Addition will remain zoned “SF-5”. The subject site is located north of Douglas and east of Jackson Heights Street, midway between 127<sup>th</sup> Street East and Greenwich Avenue. The applicant proposes to develop the site with duplexes on the five eastern lots, which are at the end of the Jackson Heights Court cul-de-sac.

The immediate area is characterized by large lot/tract single-family residential development with “SF-5 zoning on the north side of Douglas Avenue. The size of these lots/tracts range from 0.25–acres to over 4-acres with the houses on them having been built anywhere from the 1920s to 1980, with the majority having been built during the 1940s and 1950s. Materials used on the houses vary from brick, to brick and wood or composite siding, to wood or composite siding. Some of the larger lots, with houses on them, also have outbuildings on them allowing these property owner’s to keep their horses on their properties. The area also features lots of mature trees, landscaping and some mixed tree hedges. South of Douglas Avenue there is undeveloped, woody “SF-20” zoning, in a small isolated part of Sedgwick County, and a large manufactured housing park. The subject site/Garden Meadows Addition is on Jackson Heights Court, an asphalt paved, roll over curb, cul-de-sac. There is one single-family residence, built on two of the lots, in the addition. The five subject lots’ size ranges from approximately 0.33-acres to 0.50-acres.

**CASE HISTORY:** The Garden Meadows Addition was recorded with the Register of Deeds February 17, 1999.

**ADJACENT ZONING AND LAND USE:**

NORTH: “SF-5” Single-family residences  
SOUTH: “SF-5” Single-family residences  
EAST: “SF-5” Single-family residences  
WEST: “SF-5” Single-family residences

**PUBLIC SERVICES:** The site has access to Jackson Heights Court an asphalt paved, roll over curb, cul-de-sac. This cul-de-sac has access onto Jackson Heights Street, a two-lane asphalt residential street with open ditches. Douglas Avenue at this location is a two-lane asphalt residential street with open ditches. Public water and sewer service are available to serve the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Low Density Residential” development. The “Low Density Residential” category provides for the lowest density (1 to 6 units per acre) of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions, and planned developments with a mix of housing types that may include townhouse and multi-family units. The density of the proposed “TF-3” zoning matches the development density in a “Low Density Residential” area rather than a “Medium Density Residential” development density, which “TF-3” zoning is considered. The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill, and higher density residential development, which maximize the public investment in existing and planned facilities and services. The objective is intended to be achieved through several strategies, including using zoning as tools to promote mixed-use development, higher density residential environments, and appropriate buffering. The proposed “TF-3” zoning meets most of these criteria. However no buffering is required by the UZC between single-family residential use and duplex use.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area surrounding the subject site, north of Douglas Avenue, is characterized by large lot/tract single-family residential development, zoned “SF-5” Single-Family Residential. The residential development has occurred slowly, beginning in the 1920s through the present, with a majority of the immediate housing being built in the 1940s and 1950s. A few of the larger residential properties also have outbuildings on them, which allow their owners to keep horses on their property. This area features lots of mature trees, landscaping and some mixed tree hedges. The roads are generally paved asphalt with open ditches. Staff saw no vacant housing; this appears to be a vital residential neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned “SF-5” Single-Family Residential, which accommodates low to moderate-density single-family residential development and complementary land uses. The site could be developed for such uses; however, the development of 5 duplexes as proposed (approximately 6 to 4 units per acre) is within the appropriate density range (1 to 6 units per acre) for the “SF-5” district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by lot orientation and similar density to single-family lots.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The "Low Density Residential" category provides for the lowest density (1 to 6 units per acre) of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions, and planned developments with a mix of housing types that may include townhouse and multi-family units. The density of the proposed "TF-3" zoning matches the development density in a "Low Density Residential" area rather than a "Medium Density Residential" development area. The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill, and higher density residential development, which maximize the public investment in existing and planned facilities and services. The objective is intended to be achieved through the following strategy: use Community Unit Plans, Planned Development Districts, and zoning as tools to promote mixed use development, higher density residential environments, and appropriate buffering. The proposed "TF-3" zoning meets most of these criteria.
5. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted due to the minor increase in density.

DALE MILLER and BILL LONGNECKER Planning staff presented the staff report and slides.

DUNLAP Are there services available to all those lots?

LONGNECKER Yes, there is water and sewer.

BISHOP Is there a Homeowners Association, yet?

LONGNECKER Not that I am aware of.

BISHOP Would there likely be a Homeowner Association at some point?

LONGNECKER It is possible.

MITCHELL Was the sewer made available at the time of platting, in 1999?

LONGNECKER Yes, possibly one of the reasons why development has been slow in this area is because of the lack of sewer service in the area until fairly recently.

MITCHELL Which part of the improvements went with the paving for these lots?

LONGNECKER I am not sure of the answer to that.

MICHAEL NIGHSWONGER, Contract Purchaser, 906 S. George Washing Blvd, Wichita, KS 67211 Quality Built Construction I have relatives here that are going to protest this. I am not the applicant on the note, but I did pay for the application. Mrs. Hendricks being listed as the applicant may or may not have the options of proceeding with this. I am going to withdraw my interest in building the duplexes in that area, due to the fact that I have relatives in that area that do not wish this to happen.

MARNELL Are you the applicant or not, are representing the applicant?

NIGHSWONGER I signed the application and paid for it.

MILLER It would be up to the applicant if they want to continue since they have a filed application, but if they don't want to continue then we will pull it and be done.

CHARLOTTE HENDRICK, 12202 E. Douglas, Wichita, KS 67206 The contactor here came to us to try and get this rezoned to put duplexes in here. We have been trying for 5 years to sell these lots and most the people who are trying build houses in there are not interested in single-family houses because most of the houses are older. So when he came to us with the duplexes we thought that would be a good thing. We live in the area also and our grandchildren live here on the same plat. So we feel we didn't want something in there to devalue the property either and keep the property values up. We did not even know we were going to have protest. We were thinking more like twin homes and if we have a lot of protest from the neighbors then I suppose we can go ahead and withdraw rather than upset our neighborhood.

JOHNSON Do you think if we deferred this for two weeks or four weeks would that give you some time to decide if you want to proceed with the zone change?

HENDRICK I am not sure. I think most of the protestors are here so I think we can probably decide this right now.

BARFIELD He has said he has no interest in putting duplexes on there.

MARNELL But he is not the owner of the property, and if the applicant wants to go on with the zoning they can go further.

HENDRICK I didn't know if he could present some of his plans. I did not know he was withdrawing because he didn't know that there were protests that are his relatives so it put him in an awkward position.

BISHOP I think the reason we are asking about a deferral is that we have the gentlemen that brought up the notion of the twin homes has told us that he is no longer interested. So there is nothing to show us. All we have got is whether or not we want to

change the zoning for duplexes. What we are asking is if you would like to take a week or two and met with the neighbors and show them the plans because that might change the developer's mind.

HENDRICK I know that he said he was out of it, but I didn't know if he was going to show his plan to the neighbors to show them what he wanted to do before this is over today.

DUNLAP There is no opportunity for him to show his plans unless you ask for a deferral.

MARNELL Let's take a five minutes recess.

AFTER THE 5 MINUTE RECESS

MARNELL Bill, what is the decision of the applicant?

LONGNECKER The applicant has asked for this case to be withdrawn from consideration.

**MOTION:** To withdraw the case.

**MARNELL** moved, **DUNLAP** seconded the motion, and it carried (10-0).

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**10a. Case No.: CUP2004-10 DP231 Amendment #2 (Associated with ZON2004-15)** – Kelsey Investments, Inc, c/o Paul Kelsey (owner); Baughman Company, P.A., c/o Terry Smythe (agent) Request Amendment to the Copper Gate Community Unit Plan on property described as;

Lot 4, Block 1, Copper Gate Addition, Sedgwick County, Kansas. Generally located at the northwest corner of 135<sup>th</sup> Street West and 13<sup>th</sup> Street North.

and

**10b. Case No.: ZON2004-15 (Associated with CUP2004-10 DP231 Amendment #2)** - Kelsey Investments, Inc, c/o Paul Kelsey (owner); Baughman Company, P.A., c/o Terry Smythe (agent) Request Sedgwick County Zone change from "LC" Limited Commercial to "SF-5" Single-family Residential on property described as;

The north 70.00 feet of Lot 4, Blcok B, Copper Gate Addition, Sedgwick County, Kansas. Generally located at the northwest corner of 135<sup>th</sup> Street West and 13<sup>th</sup> Street North.

**BACKGROUND:** The applicant is requesting that 0.84 acres of property zoned "LC" Limited Commercial be removed from Parcel 7 of DP-231 Copper Gate C.U.P. and be zoned "SF-5" Single-family Residential. The property would become part of Copper Gate North Addition (SUB2004-00013) being platted to the north and west.

No changes are proposed for the remainder of the C.U.P.

Copper Gate C.U.P. originally included 24 ± acres, with 12 acres located on the north side of 13<sup>th</sup> Street North and 12 acres located on the south side. None of the property is developed, although there is a significant power line connecting the KGE substation on the southeast corner of 13<sup>th</sup> Street North and 135<sup>th</sup> Street West with the generating facility in Colwich that traverses the western and central part of the Copper Gate C.U.P. A few large residential tracts are developed on the east side of 135<sup>th</sup>, and a church is located on the northeast corner of the intersection. Copper Gate Estates is being developed to the southwest as a single-family addition, and Liberty Park Addition to the southeast.

**CASE HISTORY:** The original C.U.P. and zone change to "LC" was approved by the Sedgwick County Commission on February 28, 1998. The property was platted as Copper Gate Addition on April 21, 2000. Amendment #1, a similar amendment, was approved September 18, 2002 (CUP2002-30/ZON2002-51) and removed 6.48 acres comprising part of Parcel 1 and all of Parcel 2 from DP-231.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"SF-20"	Vacant, agriculture
EAST:	"SF-20", "SF-5"	Church, suburban, vacant
SOUTH:	"SF-20"	Vacant, KGE Substation, Sedgwick Co. Electric Coop
WEST:	"SF-20"	Vacant, agriculture

**PUBLIC SERVICES:** The site has access from 135<sup>th</sup> Street West and 13<sup>th</sup> Street North. Both are two-lane arterial roads on the 2030 Transportation Plan. Traffic counts were unavailable for 2000, but are projected in 2030 to be 1,212 ADTs on 135<sup>th</sup> between 9<sup>th</sup> and 13<sup>th</sup> and to be 2,355 ADTs on 13<sup>th</sup> between 135<sup>th</sup> and 143<sup>rd</sup>. Access points and transportation improvements were determined during the original approval of the C.U.P., with no changes proposed by this amendment.

Municipal services are planned for extension to the site prior to development.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the *1999 Update to the Comprehensive Plan*, as amended January 2002, identifies the general location as appropriate for "commercial" development, in conformance with the approved Copper Gate C.U.P. The property to the north and west is shown as appropriate for "low density residential".

The Far West Side Commercial Development Policy guides commercial growth at the nine intersections of 119<sup>th</sup> Street West, 135<sup>th</sup> Street West, 151<sup>st</sup> Street West with Maple, Central (4<sup>th</sup> Street North) and 13<sup>th</sup> Street North. The Far West study recommends limiting the scale of commercial development to neighborhood serving uses, and stricter guidelines appearance. Intersections within two miles driving distance of another intersection with more than 24 acres of commercial zoning are to be limited to 24 total acres on all corners, with a maximum of 12 acres on any one corner. Intersections within one mile driving distance are to be even more restricted. This intersection falls within the two-mile distance from the intersection at 135<sup>th</sup> and Maple, making it appropriate for up to 24 acres of commercial zoning. If approved, this amendment would reduce the total amount of commercial zoning at the 135<sup>th</sup> Street West and 13<sup>th</sup> Street North intersection to 16 acres.

**RECOMMENDATION:** Based upon the information available prior to the public hearing, staff recommends the request be APPROVED subject to replatting within one year and subject to the following conditions:

- C. APPROVE the zone change (ZON2004-000014) to "SF-5" Single-family Residential, subject to replatting of the property within one year.
- D. APPROVE Amendment #2 to the Community Unit Plan (DP-231), subject to the following conditions:
  - 1. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
  - 2. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  - 3. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
  - 4. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The land to the south is zoned "LC" Limited Commercial and is vacant. The land to the east is zoned "SF-20" Single-family Residential in suburban estates. The land to the west and north is zoned "SF-20" Single-family Residential, but is proposed for "SF-5" single-family development (Copper Gate North Addition); Copper Gate Estates is being developed to the southwest and Liberty Park Addition to the southeast of 135<sup>th</sup> Street West. A church is located on the northeast corner of the intersection on property zoned "SF-5", and an electric substation operated by KGE and another smaller one for Sedgwick County Electric Coop Association are located on the southeast corner of 13<sup>th</sup> Street North and 135<sup>th</sup> Street West on property zoned "SF-20".
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is approved for "LC" use and could be developed accordingly.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The zone change and amendment will reduce the available acreage for commercial development at this intersection by approximately one acre and might increase pressure for approval of alternate commercial sites at locations not in conformance with the Comprehensive Plan or Far West Policy.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The zoning requests a less intense use than shown on Land Use Guide of the adopted Comprehensive Plan designation as "commercial". It conforms to the recommended usage for the property to the north as "low density residential".
- 5. Length of time the land has been vacant as currently zoned: The land has been ready for development since 2000 when the platting of Copper Gate Addition was completed.
- 6. Impact of the proposed development on community facilities: The proposed zone change and reduced size of the C.U.P. should reduce the impact of the application area on community facilities.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (10-0).

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- 11. **Case No.: ZON2004-13** – Fouts Geller Building Group c/o Jim Fouts (owner/applicant); Baughman Company c/o Terry Smythe (agent) Request Zone change from "LI" Limited Industrial and "MH" Manufactured Housing to "SF-5" Single-family Residential on property described as;

That part of the SW 1/4 of Section 11, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas lying east of the Cowskin Floodway (Condemnation Case No. A-30410), subject to road rights-of-way for MacArthur Road on

the south, TOGETHER with all of Lot 1, Block 1, Big Lake Addition, Wichita, Sedgwick County, Kansas. Generally located North of MacArthur and west of West Street

**BACKGROUND:** The applicant requests a zone change from "MH" Manufactured Housing and "LI" Limited Industrial to "SF-5" Single-Family Residential on a 175-acre tract located north of MacArthur and west of West Street. The applicant proposes to develop the subject property with a subdivision of single-family homes containing 272 lots, many of which will surround a lake on the property. The applicant filed a preliminary plat (Blue Lake Addition) for the subject property that was approved by the Subdivision Committee on March 18, 2004, subject to the requested rezoning.

The surrounding area is characterized by a mixture of industrial and residential uses. The predominate uses in the area are the Case and Cessna manufacturing facilities and various smaller commercial and industrial businesses along the West Street and Hoover Road corridors. Residential uses in the area are predominately single family and are located immediately adjacent to industrial uses or zoning, as is proposed for the subject property.

**CASE HISTORY:** The subject property was zoned "E" Light Industrial (now "LI") on March 28, 1958 when County zoning was first established in the three-mile ring around Wichita. A Conditional Use (CU-33) for sand and gravel extraction was granted for the subject property on May 26, 1960. A Conditional Use (CU-259) to expand the sand and gravel pit was granted for the subject property on April 25, 1983. Both Conditional Uses for sand and gravel extraction were declared null and void when the property was rezoned to "G" Manufactured Home (now "MH") and platted as the Big Lake Addition on June 25, 1985. A temporary concrete plant and rock crusher associated with the reconstruction of I-235 were permitted on the subject property by Special Use Permit (DR87-5) on May 12, 1987.

#### **ADJACENT ZONING AND LAND USE:**

NORTH:	"MF-18" & "LI"	Recreational lake
SOUTH:	"LI" & "SF-5"	Recreational lake, residential, agriculture
EAST:	"LI"	Concrete plant, various commercial and industrial uses
WEST:	"LI" & "SF-5"	Various commercial and industrial uses, residential

**PUBLIC SERVICES:** The subject property has frontage along MacArthur, 31<sup>st</sup> Street South, and Bolin. The impact of the proposed development on public streets will be addressed through the platting process. The Subdivision Committee required right and left turns lanes on MacArthur and reconstructing Bolin to urban street standards when it approved the preliminary plat. Public water and sewer service are available to be extended to serve the subject property, and the Subdivision Committee required extension of these services when it approved the preliminary plat.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies a majority of the subject property as appropriate for "Medium Density Residential" development. The proposed single-family subdivision would have a density of approximately 1.6 units per acre, which is significantly less dense than the 6-10 units per acre the "Medium Density Residential" designation indicates could be supported on the subject property. Therefore, the request is consistent with the Land Use Guide of the Comprehensive Plan.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting the property within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of industrial and residential uses. The predominate uses in the area are the Case and Cessna manufacturing facilities and various smaller commercial and industrial businesses along the West Street and Hoover Road corridors. Residential uses in the area are predominately single family and are located immediately adjacent to industrial uses or zoning, as is proposed for the subject property. The requested zoning is compatible with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "MH" Manufactured Housing and "LI" Limited Industrial and could be developed with uses permitted in those zoning districts. However, the request is for a downzoning to "SF-5" Single-Family Residential, and the requested zoning is less intense and more suitable than the existing zoning of the subject property.
4. Extent to which removal of the restrictions will detrimentally affect nearby property: The subject property is zoned to permit a 513-lot mobile home park and industrial uses. The requested zoning is more restrictive than the current zoning and should have beneficial, not detrimental, effects on nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies a majority of the subject property as appropriate for "Medium Density Residential" development. The proposed single-family subdivision would have a density of approximately 1.6 units per acre, which is significantly less dense than the 6-10 units per acre the "Medium Density Residential" designation indicates could be supported on the subject property. Therefore, the request is consistent with the Land Use Guide of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: Community facilities will be sufficient to support the proposed development with completion of improvements required through the platting process.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.



**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (10-0).

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12. **Case No.: CON2004-15** – Prairie Villa at Beacon Hill, L.C.; Baughman Company P.A., (Terry Smythe) Request Conditional Use to allow duplexes on property zoned “TF-3” Two-family Residential on property described as;

The North Half of the East Half of the Southeast Quarter of the Southwest Quarter of Section 1, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas. Generally located Northeast of the Pinecrest – 21<sup>st</sup> Street North intersection.

**BACKGROUND:** The *Unified Zoning Code* permits multi-family residential uses in the “TF-3” Two-family Residential district as a Conditional Use provided the maximum density does not exceed 14.5 dwelling units per acre. The applicant is seeking a Conditional Use to permit 30 duplex structures (60 dwelling units) on a single 10.1 acre lot that is currently zoned “SF-5” Single-family Residential, but has been approved for “TF-3” Two-family Residential zoning, subject to completing a plat. As depicted on the attached site plan, the proposed dwelling unit density per acre is 5.9. This Conditional Use application would not be necessary if the applicant were willing to submit a plat that depicts one duplex structure (two dwelling units per structure) per lot. More than one duplex structure per lot makes the project a multi-family project, triggering the need for the Conditional Use since multi-family uses are not a use permitted “by right” in the “TF-3” district.

In summary, this request does nothing more than make it possible for the developer to do the same duplex project initially proposed in 2003 in a multi-lot subdivision; on a single-lot subdivision.

The tract is located approximately 600 feet north of 21<sup>st</sup> Street North and 600 feet east of Pinecrest. The site is undeveloped today. The only access to the site is via a residential street, Beacon Hill that provides access to the site from the north. A plat for this project, Prairie Villa at Beacon Hill, has been submitted and approved through MAPC on February 19, 2004. That plat has been approved without a requirement for additional access points beyond Beacon Hill.

“TF-3” Two-family Residential zoning is intended to accommodate moderate-density single-family and duplex residential development, as well as very limited density multi-family development and other complementary land uses. Minimum lot size for duplex units is 3,000 square feet per dwelling unit or 6,000 square feet per duplex unit.

Surrounding property is zoned and developed with a variety of uses: single-family residential, multi-family residential and commercial.

**CASE HISTORY:** “TF-3” Two-family Residential, subject to platting has been approved by ZON2003-00057 in 2003. The one lot Prairie Villa at Beacon Hill plat has been approved through MAPC.

**ADJACENT ZONING AND LAND USE:**

NORTH: “SF-5” Single-family Residential; single-family residential  
SOUTH: “MF-29” Multi-family Residential, “LC” Limited Commercial; multi-family residential  
EAST: “SF-5” Single-family Residential, “MF-18” Multi-family Residential; single-family and multi-family residential  
WEST: “MF-29” Multi-family Residential; vacant, multi-family residential

**PUBLIC SERVICES:** Public services are available.

**CONFORMANCE TO PLANS/POLICIES:** The “Wichita Land Use Guide” depicts the site as appropriate for “high-density residential”. This category permits in excess of 10 dwelling units per acre. The “high-density residential” category also permits lower intensity developments. A Conditional Use to permit multi-family residential development at the density proposed is an appropriate buffer project to be located between the multi-family and commercial zoning located south and west of the site, and the single-family residential zoning located to the north of the site. The single-point of access to the site is problematic, as a more direct route via a collector street would provide better access than what exists for this site today.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year and the following conditions:

- A. The maximum number of dwelling units allowed on the site shall be no more than 60 dwelling units in 30 duplex structures, plus a clubhouse.
- B. To the extent the hedgerow of trees existing along the north and east property lines are on the applicant's property, these trees shall be maintained, or if removed replaced at a one for one rate.
- C. The site shall be developed in general conformance with the approved site plan, and subject to other applicable development requirements.
- E. If the Zoning Administrator finds that there is a violation of any of the conditions of approval of this Conditional Use, the Zoning Administrator with the concurrence of the Planning Director may, in addition to enforcing any remedies set forth in Article VIII of the Unified Zoning Code, declare the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Surrounding property is zoned and developed with a variety of uses: single-family residential, multi-family residential and commercial. The area surrounding the site is part of a long established area that contains a mix of uses.

2. The suitability of the subject property for the uses to which it has been restricted: The site is presently zoned "SF-5," but has been approved for "TF-3," subject to platting. A plat has been approved by the MAPC, which if approved by City Council and recorded, perfects the proposed duplex zoning. The site could be developed as currently zoned, or under the "TF-3" only zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally affect nearby property to any significant degree. If this request is approved, the site could be developed with a mix of single-family and duplex units, or exclusively with one type of residences or the other. Either way, traffic is probably the most likely externality to affect existing developments. It would be better if the site had direct access to Pinecrest; however there are any number of neighborhoods whose access is provided by a somewhat circuitous route similar to the situation that exists with this site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The proposal is consistent with adopted plans in that adopted plans encourage infill development; and the plan indicates this site is appropriate for "high density" uses, and the request is for "medium density" residential.
5. Impact of the proposed development on community facilities: Traffic on existing residential street will increase, however existing facilities are in place to accommodate increased traffic. Other community services are available.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (10-0).

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13. **Case No.: CON2004-13** – Bradley & Cathy J. Jeffress Request Sedgwick County Conditional Use to permit an accessory apartment on property zoned "RR" Rural Residential on property described as;

Lot 10, Block 2, Harvest Valley Estates Addition. Generally located South of K-42 and east of 215<sup>th</sup> Street West.

**BACKGROUND:** The applicants are requesting a "Conditional Use" to allow an accessory apartment on Lot 10, Block 2, Harvest Valley Estates, 8400 Harvest Valley Drive. One of the applicants' mothers will live in the accessory apartment. The 5.78-acre subject site is located approximately ¼ east of the State Highway K-42 – 215<sup>th</sup> Street West – 87<sup>th</sup> Street South intersections, on the north side of 87<sup>th</sup> Street South. The property is zoned "RR" Rural Residential. The applicant currently has a one-story, stick frame, hardiplank and brick 1,738-square foot single-family residence with an attached two-car garage on the site. The proposed accessory apartment will be approximately 1,100-square feet in size, have an attached one car garage, stick framed, with a hardiplank and brick exterior. Since the building will contain kitchen and sleeping quarters, it is classified as dwelling unit and thus requires "Conditional Use" approval for an accessory apartment. The site is in Sedgwick County.

The site plan submitted by the applicant shows the apartment sitting behind the primary residence on the west side of the site, towards K-42. The site plan shows both the primary residence and the apartment to be behind platted setbacks. It also shows a 20-foot utility easement along the Harvest Valley Drive frontage, which is the end of a cul-de-sac at this location. The apartment shares the same drive onto Harvest Valley Drive as the primary residence. Harvest Valley Drive provides access onto 87<sup>th</sup> Street South.

The subject site is located in the partially developed Harvest Valley Estates addition, which consists of 35 lots, ranging in size from approximately 2.00-acres to 7.35-acres. The existing single-family residences in the subdivision have been built from 1998 to the present. The applicants' residence was built in 2002. The subdivision is an exception to the general character and development of the area, which is rural, with agricultural uses, scattered farmsteads and large tract single-family residences. The site is approximately 5 ½ miles northwest of the city of Clearwater and is in the Ninnescah River drainage area.

As per the Unified Zoning Code, the "Conditional Use" requirements for accessory apartments stipulate the following:

- (a) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling;
- (b) the appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood;
- (c) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium; and
- (d) the water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

**CASE HISTORY:** The property is part of the Harvest Valley Estates addition, which was recorded with the Register of Deeds February 18, 1999.

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR" Rural Residential

Agricultural  
Scattered farmsteads & large tract single

	family residential
SOUTH: "RR" Rural Residential	Large lot single-family residential
EAST: "RR" Rural Residential	Agricultural
	Scattered farmsteads & large tract single family residential
WEST: "RR" Rural Residential	Agricultural
	Scattered farmsteads & large tract single-family residential

**PUBLIC SERVICES:** 87th Street South and 215<sup>th</sup> Street West are unimproved Ninnescaw township roads. The 2030 Transportation Plan projects no change in their status. Harvest Valley Drive is a sand and gravel residential road. K-42 is a two-lane state highway. The site is in Sedgwick Rural Water District #4; the site has a well. The site has lagoon; there currently is no access to public sewer.

**CONFORMANCE TO PLANS/POLICIES:** The 2001 Sedgwick County Development Guide Land Use Guide of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this area as "Rural". The Rural category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services. The policies of the Unified Zoning Code allow one accessory apartment to be associated with a principle dwelling as a "Conditional Use" if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling hook-up.

**RECOMMENDATION:** Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions being completed within a year:

1. The accessory apartment shall be subject to all requirements of Section III-D.6.a of the Unified Zoning Code; including appearance of the accessory apartment shall be compatible with the primary residence.
2. The applicant shall obtain all applicable permits, including but not limited to building, health, and zoning.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area's character is rural agricultural, farmsteads and scattered large tract single-family residential. The site sits in a partially developed large lot single-family residential subdivision, with the existing houses having been built from 1998 through the present. The existing houses are single story with wood frame, brick, or a mix of brick with some type of composite or wood lap siding. Several (4) lots have large outbuildings with the houses on them. The smallest outbuilding resembles a detached garage with brick and lap siding, while the remaining larger outbuildings used a more functional/utilitarian metal siding. The applicant's accessory apartment would be the first in the subdivision and in the immediate area.
2. The suitability of the subject property for the uses to which it has been restricted: Accessory apartments are allowed as a "Conditional Use" in "RR" zoning provided the applicant and the site meet the specified criteria. The application and the site appear to meet these criteria.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental effect should be minimized by the conditions for accessory apartments by the UZC and the conditional use.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Unified Zoning Code makes specific provision for accessory apartments in "RR" zoning. This application appears to comply with all the provisions outlined in the UZC for accessory apartments.
5. Impact of the proposed development on community facilities: The applicants' request should have a minimal impact on community facilities; there is no public water or sewer available at this time. The site is in Sedgwick Rural Water District #4.

SCOTT KNEBEL Planning staff presented the staff report.

MARSHA NEWTON, 2031 S. Glendale, Wichita, KS 67218 I own property in this development. My question is, should this mother-in-law become deceased, what happens to this structure or intended use of this property? Would it become rental property?

CONNIE SMITH, 858 S. Vine, Wichita, KS 67213 I am the mother-in-law, and the answer to the question is that they have children residing at home. They will eventually be going to college, and if I am deceased or anything should happen to me, I am sure this is one of the uses intended for the apartment.

BISHOP This question is for staff. If we were to approve this, would the accessory apartment be available for rental with say a future owner?

MILLER It could be used as rental now. You could place a condition on it that says that it has to be restricted for use by owners of the property. The standard conditions are that it can't just be sold off separately, but it could be used as a rental.

MARNELL Have we not, in the past, put some restrictions on these where they had to be members of the same family?

MILLER Typically, when the condition has been placed there, it has been a medical hardship situation, and basically the language has been when the need no longer exists, then the Conditional Use is null and void. In this case, it would probably be appropriate to say that the accessory apartment could not be used for anyone that is not part of the family or does not live on the site.

KNEBEL Typically, the ones that have been restricted to where they couldn't be rented were typically for temporary structures, such as a mobile home that was going to be put there and then removed later. It is uncommon to do that for a permanently built structure.

BISHOP Is there any allowance for a guesthouse to prevent that from being used as a rental?

MILLER You would have to have the Conditional Use to have the accessory apartment. They wouldn't let them build two structures on the single-family zoned lot that have full kitchen facilities.

JOHNSON Dale, could we restrict it to family or guesthouse?

MILLER Yes.

JOHNSON I could see where some people would like a guesthouse.

MCKAY I think the application is pretty clear, and we should add the condition of immediate family only.

MARNELL I wouldn't think that if the parent that it was being built for left there for whatever reason, I wouldn't want to see them have to tear a perfectly good structure down.

MCKAY The reason why I am saying that is let's say, for example, they sell the property, and if that is not in the recommendation of approval, then they can say I have two properties and I can rent one.

MARNELL I agree the next owner should be able to use it for family, but not a rental.

**MOTION:** To approve, subject to staff comments and citing the findings in their report except that following conditions shall be added: The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium or lot for rent and for use by immediate family (children of the owner, parents of the owner and the owner's grandchildren) only.

**MCKAY** moved, **BISHOP** seconded the motion, and it carried (10-0).

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14. **Case No.: ZON2004-11** – Paul B. and Yasuko Oman (applicant); Moehring & Associates (agent) Request Sedgwick County Zone change from "RR" Rural Residential to "NO" Neighborhood Office on property described as;

A tract in the Southwest Quarter of Section 16, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as beginning at a point on the South line of said Southwest Quarter, said point being 230 feet West of the Southeast corner thereof; thence West along the South line of said Southwest Quarter. 464 feet; thence North parallel with the East line of said Southwest Quarter, 523 feet; thence East parallel with the South line of said Southwest Quarter, 464 feet; thence South 523 feet to the point of beginning, except the South 60 feet for highway. Generally located North and east of 53<sup>rd</sup> Street and Tyler Road.

**BACKGROUND:** The applicant is seeking to rezone 4.93 unplatted acres located 3/8 of a mile east of Tyler Road, north of 53<sup>rd</sup> Street North from "RR" Rural Residential to "NO" Neighborhood Office. The site is developed with a 2,618 square foot single-family residence built in 1989 that utilizes on-site sanitary sewer and water facilities. The zoning is being requested in order to redevelop the site for office use. The site has mature evergreen trees located on both the east and west sides of the structure and along most of the perimeter of the property. The structure is also set back over 120 feet from the nearest side and rear property line, buffering adjoining properties with the applicant's own property. A parking area is located in the front of the structure with two drives to 53<sup>rd</sup> Street.

There are homes located to the east and west of the site. There is also sand extraction being conducted on property located east of the application area. Property located north of the application area is also being mined for sand with eventual development as a residential subdivision. Land south of the site is being farmed. All surrounding property is zoned "RR" Rural Residential. The two sand pits have Conditional Use permits to allow for sand extraction.

Conversion of a single-family structure to a non-residential use will trigger the need for a building permit and a review of renovation plans. Renovation plans will be reviewed by County Code Enforcement per applicable building codes that may require significant alterations (e.g. Americans with Disability Act compliance; modification to on-site sewer systems) before the structure can be used for a nonresidential use. If this request is approved, and all the square footage of the existing structure counts towards the parking requirement, the applicant would need to provide 11 parking spaces. The two driveways on this site may not be in compliance with the County's current drive separation standards.

According to the recognized trip generation estimates, office uses generate on average 11 trips per 1,000 square feet of floor area. An office use on this site could generate approximately 27 trips per day.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR" Rural Residential with CU to permit sand extraction; sand pit  
SOUTH: "RR" Rural Residential; agriculture  
EAST: "RR" Rural Residential; large lot residential  
WEST: "RR" Rural Residential; large lot residential

**PUBLIC SERVICES:** 53<sup>rd</sup> Street is a paved two-lane county highway. Public sewer and water services are not available.

**CONFORMANCE TO PLANS/POLICIES:** This site is located within the City of Maize's "zoning area of influence," that, according to the *Unified Zoning Code*, triggers the need for the City of Maize's Planning Commission to review this request. The *Wichita-Sedgwick County Comprehensive Plan* land use guide map depicts this site, and the majority of the surrounding area as being appropriate for "rural" uses. The County's "office location guidelines" state that office uses should be located adjacent to arterial streets; local, service-oriented offices should be incorporated within or adjacent to neighborhood scale commercial development and low density office use can serve as a transitional land use between residential uses and higher intensity uses. The City of Maize's adopted *Comprehensive Development Plan 1980-2000* future land use map does not cover this application area. However, during hearings regarding other nonresidential zoning requests along 53<sup>rd</sup> Street, City of Maize Planning Commissioners have indicated that they see 53<sup>rd</sup> Street as a commercial corridor, and have supported higher intensity zoning requests along this road segment. The Board of County Commissioners has also supported these earlier requests.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned "RR" Rural Residential, with a mix of uses ranging from agricultural, large-lot residential and sand extraction. The character of this area appears to be one of transition from an area dominated by agricultural, large lot residential area and resource-based mining uses to more intensive uses including: vehicle repair, school bus parking and repair, office and construction services.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is developed with a large single-family residence that is attractively landscaped. The site is suitable for use as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: All surrounding properties are zoned "RR" Rural Residential, which is a relatively restrictive zoning district when compared to other residential districts and non-residential districts. Approval will introduce the potential for approximately six additional uses not currently permitted by the existing zoning (e.g. multi-family, assisted living, group home, medical service and office)
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The most significant hardship to the applicant if this request is denied would presumably be the loss in income based upon a residential versus an office sales price.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is not consistent with adopted plans or location criteria, but appears to be consistent with the City of Maize's stated intentions for this segment of the corridor and with earlier approvals for nearby non-residential zoning requests.
6. Impact of the proposed development on community facilities: The site utilizes on-site sewer and water facilities; therefore those same public facilities will not be impacted. The applicant may be required to upgrade those on-site facilities due to the change in use. 53<sup>rd</sup> Street is capable of carrying the expected traffic generation rates, however additional right-of-way may be requested at platting if the site does not meet current minimums.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (10-0).

15. Other matters/adjournment.

BISHOP I would like to ask John to give a report on the Rail/Trail issue. Will the MAPC be considering it?

MARNELL I want to see those people who get these trails built pay for it like the people who play golf on the golf courses and quit spending government money.

SCHLEGEL I can do that only if the MAPC wants it.

BARFIELD John, you had mentioned that there was a railroad that was interested in purchasing that property. Is that still underway?

SCHLEGEL We are working on a rail banking of that BNSF corridor out to the east side of town from approximately Hydraulic out to Butler County line. There was a proposal by a local group to run an excursion train, but that has died. Then another group wanted to run a diner car, and that has gone nowhere.

MARNELL Did you see the piece in the paper in regards to this? I don't want to hear another report.

**BISHOP** moved that there be an information report regarding Rail/Trail rail banking issue.

MITCHELL We have not been asked. The process now is for DAB I, and DAB II to hear it, and to go to the WCC; and I don't see any reason for us to inject ourselves in that process.

SCHLEGEL The MAPC would hear it when it came to funding the actual development of the trail. Either the UPWP or the TIP.

**MOTION:** Dies lack of second.

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The Metropolitan Area Planning Department informally adjourned at 3:44 p.m.

State of Kansas)  
Sedgwick County) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)